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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Agenda item 10 (a)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(A) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT

Written statement submitted by the American Association of Jurists
a non-governmental organization in consultative status
(Category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

GE.90-12369/7040A

best copy available

[22 May 1990]

1. I have the honour to transmit to you, for the Working Group on Detention subordinate to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a number of comments on the draft Declaration on enforced or involuntary disappearance worked out at the meeting held on 21 March 1990.

2. In our view, this draft - and we understand that there is a consensus to that effect - should serve as the basic working document for discussion of the item at the next meeting of the Working Group on Detention. We have therefore formulated the following comments on the draft.

Comments on the latest version of the draft Declaration on enforced or involuntary disappearance prepared at the meeting in March 1990

3. Preamble: We propose that the second preambular paragraph should be deleted since it is a repetition, in reverse order, of the second part of the first preambular paragraph.

Third preambular paragraph: The separate citation of Article 55 of the Charter is not relevant, since the obligation of States under the Charter is established in Article 4 (1) of the Charter and the promotion of human rights in particular appears not only in Article 55, but also in Article 1 (3) and in the Preamble. We therefore propose that the reference to Article 55 should be deleted and that the paragraph should be consistent with the two Covenants on Human Rights.

4. We propose that the fourth paragraph, beginning "Deeply concerned ...", should be replaced by a paragraph reading: "Deeply concerned at reports from various parts of the world of numerous cases of enforced or involuntary disappearance;". We suggest that the description of the constituent elements of enforced disappearance should be deleted from this paragraph, leaving the definition of this offence to article 1 of the Declaration.

5. We propose that the reference, in the seventh paragraph, to the Geneva Conventions and the Additional Protocols should be deleted, since these instruments deal with a totally different question: disappearance as a result of armed conflict, and not disappearance as a deliberate practice, which is the theme of this Declaration (see Jan Egeland, Humanitarian Initiative against Political Disappearances, chap. II, para. 3, Institut Henri Dunant, Geneva).

6. We propose that in the penultimate preambular paragraph the words "other entities exercising effective power" should be replaced by "the organs and officials responsible for enforcing the law". We consider that confusion will arise from the phrase we propose to change, and in particular from the term "entities", which already appears in the English and Spanish texts of the 1975 Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, but not in the French text, which uses the term "autorités".

7. Article 1, paragraph 1:

We propose that the text should be changed to the following:

"For the purposes of this Declaration, enforced or involuntary disappearance shall be defined as seizure of a person by means of official or unofficial detention, abduction or transfer from an official place of detention, carried out by agents of the State or private individuals with the connivance, support, acquiescence or toleration of the State or its agents, followed by failure to inform the relatives or representatives of the said person of his arrest or transfer, and/or concealment of his whereabouts, and/or a refusal to acknowledge his detention.

The connivance, support, acquiescence or toleration of the State or its agents shall be presumed to exist in the event of disappearance if the following circumstances, among others, exist:

(a) When the judicial, police, security or military authorities omit or refuse to carry out, or delay in carrying out, the measures required to prevent the disappearance or to establish the whereabouts of the disappeared person and to cause him to be brought without further formality before an independent and impartial magistrate so that the latter may take the appropriate decision according to the law;

(b) When an agent of the State of any rank places any impediment or obstacle in the way of requests for, or execution of, the measures referred to in (a), including searches or visual inspection, and/or when the representatives of the disappeared person are not permitted to exhaust all remedies in order to locate him;

(c) When the arrest of a person, presumably carried out by agents of the State, is not recorded at the police station having jurisdiction over the place where it occurred, together with the names of the persons who participated in the procedure and the authority which ordered it;

(d) When, in cases where such details are recorded, the detainee's representatives or relatives are not permitted to see the relevant record;

(e) When the transfer of an officially detained person from one place of detention to another is not fully justified in writing, with the date and time of the transfer and the names of the persons carrying it out, together with those of the persons receiving the detainee and the new place of detention, or when such information is withheld from the relatives or representatives of the detainee.

The concomitant existence of a systematized practice of enforced or involuntary disappearance and/or of clandestine or unofficial places of detention under the operational control of organizations, institutions or agents of the State constitutes a grave presumption of enforced or involuntary disappearance."

8. We regard it as essential that the Declaration should define enforced or involuntary disappearance, as is done for the subject of each Declaration in nearly all the Declarations adopted by the United Nations. We also consider

it necessary, as is almost unanimously held in penal doctrine and stated in penal legislation, for the definition of the offence to consist solely of the objective and subjective elements of the act, separately from its legal description. Lastly, we deemed it vital to include as a supplement to the definition legal presumptions of "the connivance, support, acquiescence or toleration of the State or its agents", thus making it possible to focus on State participation, either through action or omission, as a primary constituent element in the characterization of enforced or involuntary disappearance as an offence.

9. Article 1, paragraph 3:

We propose that the text should be amended to read: "The offence of enforced or involuntary disappearance, together with the systematized practice of enforced or involuntary disappearances, is a crime against humanity."

10. We believe it is not necessary that there should be a "systematized practice" of enforced disappearances for the characterization of "crime against humanity" to extend to it. An individual may effect a single enforced disappearance and this can be characterized as a crime against humanity if it forms part of a systematized practice of enforced disappearance (see debate on the definition of a crime against humanity in Yearbook of the International Law Commission, (A/CN.4/SER.A/1987/Add.1), 1987, Volume II, Part Two, paragraph 66 and the report of the International Law Commission on the work of its forty-first session, 2 May-21 July 1989, paragraphs 146-148 (Supplement No. 10, A/44/10)).

11. Article 4:

We propose the following wording: "Each State shall adopt the necessary measures to ensure that, under its criminal law, the enforced or involuntary disappearance of persons, whether perpetrated or attempted, as defined in article 1 paragraph 1, is regarded as a separate offence of the gravest kind, establishing severe penalties for its perpetrators, participants, instigators and accessories."

12. Article 5:

We propose the addition of "tolerated" before "or acquiesced".

13. Article 9, paragraph 1:

We propose that "and/or" should be substituted for "or" in the phrase "or identifying the authority ..."

14. Article 9, paragraph 2:

We propose that the first paragraph should read as follows: "In such proceedings, competent and independent national magistrates and investigating missions dispatched by the relevant United Nations bodies ...".

15. We believe it must be laid down that the national authorities responsible for the investigation are to be magistrates independent of the Administration, in other words, examining magistrates, prosecutors, etc., and not simply

"authorities". The Declaration cannot refer to competent international authorities since there are no international authorities having competence within the territory of a State.

16. Article 10, paragraph 2:

We propose that the end of the paragraph should be replaced by the phrase "any independent magistrate acting within his field of competence".

17. Article 13, paragraphs 1 and 2:

We propose that the word "authority" should be replaced by "magistrate".

18. Article 14:

We propose that the phrase "offence referred to in article 4" should be replaced by "offence defined in article 1, paragraph 1", and the term "competent authorities" by "competent and independent magistrates".

19. Article 16:

We propose that the following article should be inserted after article 16: "Mitigating or exculpatory circumstances may be established in national legislation for persons who, having taken part in enforced or involuntary disappearances, are instrumental in bringing the victims forward alive or voluntarily give information enabling cases of disappearance to be solved, unless they themselves have committed acts of torture or homicide" (see draft of Organization of American States, art. 13).

20. Article 17, paragraph 1:

We propose that the phrase "acts referred to in article 4" should be replaced by "acts described in article 1 paragraph 1". We further propose that a third paragraph should be added to article 17, reading as follows: "No privileges, special courts, or exclusive jurisdictions for the trial of the offence of enforced or involuntary disappearance shall be permitted. Such an offence shall not be considered as an offence committed in the course of military duties for the purpose of determining jurisdiction or the applicability of military penal legislation" (see draft of Organization of American States, art. 10).

21. Article 18:

We propose the addition of a second paragraph, reading as follows: "The offence of enforced or involuntary disappearance is a permanent offence, for the purposes of State responsibility and the criminal responsibility of the perpetrators. The offence ceases to exist only with the reappearance of the victim" (see report of the International Law Commission, Supplement No. 10 (A/44/10), already cited, para. 229, and the finding of the Inter-American Court in the Velázquez Rodríguez case, of 29 July 1988, paras. 181 and 184).

22. Article 21, paragraph 1: We propose that the phrase "deprivation of liberty" should be replaced by "enforced disappearance".

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Item 6 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), a non-governmental organization in consultative status
(Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

(22 June 1990)

GE.90-12419/3891a

THE FORGOTTEN PALESTINIANS

1. Of all the segments of the fragmented and dispersed Palestinian people, the one that has been abandoned and even forgotten by the international community is the remnant of Palestinian society which managed (against great odds) to remain in what became in 1948-1949 the State of Israel. It is to its credit that the international community has responded as well as it has - especially since the beginning of the intifada - to the needs of the beleaguered Palestinians of the West Bank and Gaza Strip. However, as has happened at other critical junctures in Palestinian history, the international community seems to view the intifada in isolation from its historical context. Without minimizing the importance of the intifada, it must be emphasized that this uprising is only the latest stage of a tragedy whose seeds were planted at the turn of the century and came into first bloom in 1948.

2. In the long run, none of the segments of the Palestinian people will benefit from this fragmented view of history. And in the case of the forgotten Palestinians (those who are citizens of Israel), such a narrow perspective of history affords Israel the opportunity to continue the daily process of eroding and attempting to erase this community. It is incumbent upon the international community (Governments as well as non-governmental organizations) to do two things: acquaint itself with the plight of the forgotten Palestinians and provide the kind of support that will strengthen and empower them. For more than 40 years, now, the Palestinians who became citizens of Israel have endured a succession of devastating events. These include: massacres of civilians; a vicious expulsion of the majority of their community (about 750,000 people); almost 18 years of official and brutal military rule; and a systematic and massive expropriation of most of the land of those who managed to remain as well as of those who did not. Tragically, this is only the beginning of the story. These Palestinians have effectively been relegated to the status of internal refugees - "present absentees" - as many of them are referred to in Israeli newspeak - in their own homeland. Contrary to popular mythology, Israel is not a democracy. It is no less an apartheid State than South Africa. Its Palestinian citizens are subjected to a cleverly masked, legally mandated and systematized deprivation in every aspect of life. From cradle to grave, the forgotten Palestinians are condemned to a life of institutionalized racism. What follows is a discussion of some current aspects of the situation; what this Palestinian community would like to do for itself; and what the international community can do to help improve the chances of some success.

Some background notes

3. In order to better understand what follows in two of the sections below (Land and Legal Mechanisms and Machinations), it is necessary to say a few words about the nature of the State of Israel and its founding ideology - Zionism. Israel is, first and foremost, a Jewish State. Its Declaration of the Establishment of the State proclaims this. Much of the legal structure of the State demonstrates this and Israeli courts have held that "Israel is the sovereign State of the Jewish people". What this means in practical terms is that Israel is a State of and for all those it considers as the "Jewish people", "wherever they are" and it is not a State of and for all of its citizens.

4. Although the Zionist movement basically followed a western colonialist pattern when it built the foundation upon which the Jewish State was eventually established, the movement departed from this colonial pattern in at least one respect: it did not want to exploit the indigenous population; it wanted to get rid of them. This was for the purpose of "cleansing" the country and paving the way for the establishment of a purely Jewish State.

5. Though it tried very hard, the State-in-formation was not completely successful in 1948-1949: about 150,000 Palestinians managed to remain. By now, their numbers have swelled to approximately 750,000 (or about 18 per cent of the citizenry of Israel). They have citizenship and voting rights. Nevertheless, in every aspect of life, they are consigned to being strangers in their own land.

Land

6. "Redemption" of the land became, prior to 1948-1949, the raison d'être of the Jewish national institutions. Land acquisition and Jewish settlement were and are the cornerstones of the Zionist movement and the Israeli State. In the fifties and sixties, Israel promulgated a series of inter-related land laws which (especially when used in conjunction with the already existing Defence (Emergency) Regulations (1945) were designed to sanitize and "legalize" its massive land theft of that period. That land theft speeded up the process of disinheriting the Palestinians both spiritually and materially. Almost over night, it urbanized a peasant society and converted its men into a day labourer, unskilled workforce performing what is referred to in common Hebrew parlance as "Arab work".

7. Today, the land laws (mentioned above) and other practices are being used to effect the last stages of Judaization (an Israeli term) of Palestinian land inside the "green line" (the 1948-1949 borders). There are about 60 villages in the Galilee and Little Triangle and over 20 in the Naqab (Negav desert) which have never been given official recognition as existing, despite the fact that most have been in their present locations since before the emergence of the State - some for hundreds of years. Because they are unrecognized, they receive no services from the State, notwithstanding the fact that the villagers pay taxes like everyone else. These villages, almost uniformly, have no water, no electricity, no access roads, no health services, no telephones, no sewerage systems, no kindergartens or schools. (To some extent, many recognized villages also suffer from this kind of deprivation).

8. In 1986, a government commission (Markowitz) issued a report essentially recommending that these villages be razed and that their inhabitants be relocated. The lands of these villages would then become part of the patrimony (in perpetuity) of the "Jewish people". This process of contemporary village erasure has already been put into motion. In one case, the only thing that stood between the government bulldozers and the people's homes were the barricades erected by the villagers and their own bodies. The destruction in that case was postponed. The fact is that in both recognized and unrecognized villages, the bulldozer - which should represent growth and prosperity - has come to represent destruction and decimation. Homes are routinely demolished for lack of license in Palestinian villages inside the "green line". All too often, these demolitions occur in the small hours of the morning with the aid of helicopters and hundreds of soldiers.

9. In 1988, 462 houses were demolished inside the "green line" (see HaAretz, 4 April 1989). This, in the aggregate, is the size of a village. Demolition of homes for lack of licence seems to serve two purposes from the Israeli point of view. It is hoped to be an effective tool of intimidation, isolation and subjugation. It also serves as a tool for preventing physical growth. This demolition is a direct result of another of Israel's land practices: the obstruction of physical planning (and therefore a lack of building permits) in the Palestinian sector. This policy, combined with the massive land grabs, has left the Palestinian community with no choice but to build wherever they can, without benefit of licence. It is clear that the obstruction of planning is, in fact, a form of planning for obliteration.

Legal Mechanisms and Machinations

10. Effectively, Israel maintains a dual system of law (even or especially inside the "green line"): one for Jews and one for non-Jews (that is, Palestinians). This is in addition to the laws which by custom and practice are applied almost exclusively in the Palestinian sector. The latter include:

(a) The pernicious Defence (Emergency) Regulations (1945) which have been in force since the establishment of the State and provide unlimited power to the State with regard to land and property acquisition. They also provide for administrative detention and house and town arrest - which are still used inside the "green line";

(b) The land laws mentioned above;

(c) The notorious (and mistitled) anti-terrorism law and its amendments; the latest of which, when passed, will provide the State with the ability to prevent Palestinians from maintaining non-profit (voluntary) grass-roots associations for defending their rights and developing a modicum of economic self-sufficiency and cultural integrity;

(d) The Basic Law: Knesset, amendment 7 provides that: "a list of candidates shall not participate in the elections for the Knesset if its aims or actions expressly or implicitly point to the following: (1) Denial of the existence of the State of Israel as the State of the Jewish people".

11. But the really insidious duality of law (which provides the legal mechanism for Israeli apartheid) differs from South Africa's in at least two significant ways: it is constructed in such a way that it is not readily apparent; and its racist bias is actively pro-Jewish rather than actively anti-non-Jewish. It works this way: the Jewish "national" institutions, which prior to the establishment of the State served as a shadow Government and as a kind of Government in exile, are constitutionally mandated to be in the exclusive service of the Jewish people. After the establishment of the State, these national institutions and their constitutions were incorporated into the body of Israeli law (see for example, World Zionist Organization, Jewish Agency Status Law, 1952). The laws that incorporated the Jewish national institutions do not make distinctions between Jews and non-Jews. They rely on the constitutions of the institutions to make these distinctions. At the same time, these laws give extraordinary governmental power to the institutions which are committed to serving only Jews. It is in this way that legal apartheid is promulgated in Israel.

12. There is one more legal chicanery worth mentioning here, which has to do with the 1965 Building and Construction Law. Originally, this law was formulated on the assumption that it would serve (as in other countries) as a regulator of land use and physical planning. In practice, though, this law has not been really implemented. Which means, in effect, that a great deal of illegal building occurs in the Jewish sector as well as in the Palestinian sector. In the Jewish sector all such building is either approved after the fact; or what is more likely, construction is never subjected to the approval process at all. Of course, as mentioned above, in the Palestinian sector, all illegal building is subject to the bulldozer.

What can be done

13. In the long run, most Palestinians inside the "green line" would like to see the State de-Zionized, so that it becomes a State for all its citizens. For the immediate present and future, the Palestinians have come to the recognition that the State will continue in its way and that they must develop alternative institutions for the development of some self-sufficiency and physical infrastructure; for the defence of threatened land; for strengthening of cultural heritage and for providing for an enrichment in their children's education. There are currently more than 80 voluntary (non-profit) Palestinian associations dealing with many aspects of life. As mentioned above, the proposed new amendment to the anti-terrorism law threatens the existence of these associations.

Obligations for the international community

14. First of all, it should be acknowledged that the international community bears some responsibility for the well-being of the forgotten Palestinians. A very important first step is for the international community to inform itself on the real situation and the needs of this Palestinian community. This should include the sending of delegations to the area. Material aid in the form of financing projects is sorely needed. The list, of course, is potentially endless. But it seems that the most important service the international community can perform for the Palestinians who are citizens of Israel is to let them know they are no longer forgotten, and to join their call for the democratization of the State in which they live as citizens.

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities

Forty-second session
Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the Four Directions Council, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[26 June 1990]

WORLD CONFERENCE ON HUMAN RIGHTS

1. The Four Directions Council welcomes the proposal for convening a World Conference on Human Rights and believes that the Sub-Commission can play an invaluable role in advising the Commission on Human Rights and the General Assembly on the structures, objectives, and procedures which may best serve the overall aims proposed for the Conference.

2. For the convenience of the Sub-Commission, we have organized some suggestions for the Conference in the form of a draft resolution, such as the Sub-Commission itself may wish to adopt at its current session.

"The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling the first International Conference on Human Rights, held at Teheran in 1968 on the occasion of the twentieth anniversary of the Universal Declaration of Human Rights, to review the progress made since its adoption and to formulate a programme for the future,

Noting that the United Nations recently celebrated the fortieth anniversary of the Universal Declaration of Human Rights,

Aware that, despite the progress made since 1968 in the adoption of new standards and wider dissemination of public information in the field of human rights, gross and persistent violations of human rights and fundamental freedoms continue to occur throughout the world,

Noting that the General Assembly, in its resolution 44/156 of 15 December 1989, invited the views of Governments, specialized agencies, non-governmental organizations and United Nations bodies concerned with human rights on the desirability of convening a world conference on human rights, for the purpose of dealing at the highest level with the crucial questions facing the United Nations in this field,

Noting also decision 1990/110 of 7 March 1990 of the Commission on Human Rights, that it would be desirable to convene a world human rights conference,

Believing that convening such a Conference could contribute to the wider realization of human rights, if it is carefully focused on the evaluation and strengthening of the United Nations existing human rights programme and machinery, and if it is preceded by a thorough, substantive, and broadly participatory preparatory process,

Conscious of its role in assisting the Commission on Human Rights by providing it with recommendations based on the different views and perspectives of independent experts, as was reaffirmed in Commission resolution 1990/64 of 7 March 1990,

Considering, as did the General Assembly in its resolution 44/55 of 8 December 1989, that the purpose of the international community must be to forge from varied economic, social and political conditions a global environment of sustained development, full enjoyment of human rights and fundamental freedoms, and social justice and peace,

Convinced that changing world conditions, including the trend towards democratization, and new challenges to the full enjoyment of human rights, such as extreme poverty and environmental degradation, will require creative approaches to the further implementation of human rights standards,

Welcoming, in this regard, the report of the Global Consultation on the Right to Development as a Human Right (E/CN.4/1990/9);

Recognizing, as did the General Assembly in its resolution 44/129 of 15 December 1989, the critical situation with regard to overdue reports from States parties to the International Covenants of Human Rights,

Recognizing also, as did the General Assembly in its resolution 44/135 of 15 December 1989, the need for securing sufficient financial resources to ensure the proper functioning of the human rights treaty bodies,

Concerned that the financial and staff resources of the Centre for Human Rights have not kept pace with its increasing workload,

1. Welcomes the proposal for a world conference on human rights;

2. Recommends that the annexed guidelines be taken into account in the planning and preparations for the conference;

3. Recommends also that the Commission on Human Rights consider these guidelines at its forty-seventh session;

4. Requests the Secretary-General to circulate this resolution, with its annex, to Governments, specialized agencies, United Nations bodies concerned with human rights and development, and intergovernmental and non-governmental organizations for their information."

ANNEX

Guidelines for the World Conference on Human Rights

1. The conference should be convened in 1993, if possible, and in a country that has recently made substantial progress in the achievement of human rights and development.

2. The conference should aim at producing concrete recommendations for improving the effectiveness of United Nations activities in the field of human rights, including proposals for new institutional and financial arrangements.

3. The theme of the conference should be: "New challenges for human rights in the twenty-first century".

4. The specific objectives of the conference should include:

(a) A thorough inter-disciplinary evaluation of the effectiveness of existing multilateral mechanisms for the promotion and protection of human rights;

(b) Formulation of proposals for new implementation mechanisms, with particular attention to the future operational aspects of the United Nations human rights programme;

(c) Anticipation of the future personnel and financial needs of the United Nations human rights programme, and ascertaining the best means of meeting these needs fully;

(d) Identification of innovative ways of improving co-ordination within the United Nations system in the field of human rights, in particular through linkages among programmes in the fields of development, peace, and the environment; and

(e) Implementation of the recommendations of the Global Consultation on the Right to Development as a Human Right (E/CN.4/1990/9).

5. The Economic and Social Council should serve as the preparatory committee for the conference, and should establish an in-sessional working group for this purpose. The chairmen of the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the human rights treaty bodies should be invited to participate in all preparatory meetings.

6. In preparation for conference, the Secretary-General should:

(a) Invite widely-recognized independent experts from different academic disciplines and different political, economic and cultural systems to prepare studies and recommendations on the objectives of the conference, to be completed and distributed to the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the human rights treaty bodies prior to the forty-seventh session of the Commission;

(b) Convene a preparatory conference of recognized experts in the fields of law, development planning, social development and related fields, as well as governmental and non-governmental representatives, to consider and report on problems and opportunities for the future of the United Nations human rights programme;

(c) Organize a formal consultation of professional staff from the United Nations programmes concerned with human rights, development and the environment, as well as appropriate specialized agencies, with the aim of preparing proposals for consideration by the conference.

7. Preparations should begin at least two years in advance of the conference and should be co-ordinated by the Centre for Human Rights.

8. Non-governmental organizations should be encouraged to submit concrete written proposals to the Economic and Social Council as part of the preparatory process for the conference, and should be invited to attend both the preparatory meetings and the conference itself, as observers.

9. Governments and non-governmental organizations should be urged to conduct national-level consultations with the widest possible spectrum of grassroots constituencies, such as women, youth, industrial and rural workers, indigenous peoples, and particularly vulnerable or disadvantaged groups, and to summarize these consultations in written reports to the conference.

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
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of Minorities
Forty-second session
Item 10 (a) of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES: QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT

Written statement submitted by the International Institute of Higher Studies in Criminal Sciences, a non-governmental organization in consultative status (Roster)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 June 1990]

I. BACKGROUND OF THE INSTITUTE

1. The Institute is a non-profit international education foundation, established by Presidential decree under Italian law, devoted to the multi-disciplinary study of the criminal sciences in their broadest meaning. It is under the scientific auspices of the International Association of Penal Law.

2. The Institute enjoys the status of a non-governmental organization on the Roster, and that of a non-governmental organization accredited to the Council of Europe. The Institute has hosted the meetings of a number of committee of experts of the United Nations and the Council of Europe. These committees convened to prepare draft international instruments, including the Convention against Torture and the Basic Principles on the Independence of the Judiciary.

3. Since 1972 the Institute has conducted 110 conferences, seminars and meetings of experts on diverse topics of criminal justice and human rights, with the participation of over 5,600 jurists from 79 countries.

II. THE DEVELOPMENT OF THE ARAB HUMAN RIGHTS PROGRAMME

4. Among the programmes offered annually was a programme in 1985 developed for Arab jurists on the topic of "Criminal justice reform and human rights education". It was attended by jurists from 10 Arab States and from Palestine. At the conclusion of that conference, the participants expressed, in an unanimous resolution, their desire that the Institute convene a meeting of Arab experts to prepare a draft Arab charter on peoples' and human rights. That meeting took place in December 1986. Upon completion, the draft charter was submitted for consideration to the League of Arab States and to all Arab heads of State. Three thousand copies of the published text were widely circulated throughout the Arab world and elsewhere. The wide-ranging support the draft charter received was evidenced by its endorsement by the Arab Union of Lawyers, and by the large number of newspaper and magazine articles which praised it. The debate on the draft charter still goes on in Arab academic, legal and political circles.

III. THE HUMAN RIGHTS TEACHING CONFERENCES

5. The Institute organized a series of five teaching conferences, spanning the programmes (described below) in which more than 350 law professors, judges involved in judicial training programmes or institutes, police academy instructors and senior army military justice officers will have participated. The programme is intended to prepare participants to teach human rights as a specialized course, or as part of other courses. Each conference covers eight working days, seven hours per day. The lectures and discussions are in Arabic, with Arabic language materials.

6. The first of these conferences took place in January 1987, with 42 participants; the second took place in June 1988, with 53 participants; the third in December 1988, with 53 persons participating; the fourth took place in June 1989, attended by 56 participants; and the fifth conference is planned for July 1990, with some 60 participants.

IV. PUBLICATIONS

7. In preparation for teaching human rights in Arab institutions, four basic books have been written, as follows:

(a) Volume I, Human Rights: International and Regional Instruments is a compendium of international and regional human rights conventions, translated into Arabic. The preface was written by the United Nations Under-Secretary-General Jan Martenson;

(b) Volume II, Human Rights: Studies on International and Regional Instruments contains studies and explanatory reports and analyses of international and regional instruments;

(c) Volume III: Human Rights: Applications in the Arab World contains reports on special applications of internationally protected human rights within the Arab world, with specific reference to the Constitutions of the Arab States and laws. Its introduction has statements by King Hussein of Jordan and Prime Minister Mahdi of the Sudan;

(d) Volume IV, Human Rights: Teaching Methods is a methods book on how to teach human rights (and its contents) in law schools, police academies, judicial institutes, military justice and other specialized institutions.

8. These four volumes are the first of their kind ever to be published in Arabic. The Institute has distributed over 1,000 copies of each volume to law professors, researchers, bar associations and law libraries throughout the Arab world.

9. A special publication, under the auspices of the Council of Europe, was released in September 1989. It contains the European Convention on Human Rights and the European Convention on Torture. It is the first Arabic translation and dissemination in book form of these instruments. The preface was written by the Secretary-General of the Council of Europe, Marcellino Oreja.

10. The proceedings of the conference entitled "The Protection of Human Rights in Comparative Criminal Proceedings: Egypt, France, the United States" (described below) was published in September 1989, in "8 Nouvelles Etudes Pénales".

11. The Institute also published the conclusions and recommendation of the conference entitled "Criminal justice reform and human rights education" (1985) and the "Draft Arab charter on people's and human rights" (1986).

V. IMPACT OF THIS PROGRAMME AND OTHER RELATED INITIATIVES IN THE ARAB WORLD

12. Partly as a result of these programmes, a number of law schools and specialized institutions have established human rights institutes and programmes. The universities of Cairo, Zaqazig, Mansourah and Assuit have established Human Rights Institutes, and the Research Center of the Egyptian Police Academy is planning one. The following faculties of law have also established human rights courses: Assuit, Casablanca, Cairo, Ein-Shams, Fez, Jordan, Khartoum, Kuwait, Lebanese, Mansourah, Mu'ta, Rabat, Tunis, Zaqaziq. In addition, the faculties of law of Aleppo, Benghazi and Damascus Universities are planning such courses.

13. These programmes have also initiated or contributed to the process of stimulating research and study of human rights in various parts of the Arab world, which has taken a variety of forms.

14. In December 1987, the University of Cairo Law School held a conference entitled "Teaching human rights in law schools".

15. Since 1987, the Egyptian Association of Criminal Law has held its three annual congresses on a topic which included human rights.

16. In April 1988, a conference was held in Alexandria entitled "Protection of human rights in comparative criminal proceedings: Egypt, France, and the United States". It was organized by the Institute in collaboration with the Egyptian, French and American sections of the International Association of Penal Law. Its proceedings were published in "8 Nouvelles Etudes Pénales" (1989).

17. In January 1989, an international conference was held entitled "United Nations declaration on principles of justice for victims of crime and abuse of power". The conference's recommendations were read in the presence of President Mubarak, the Egyptian Cabinet and many dignitaries, and were carried by Egyptian television and radio programmes on that day. The recommendations incorporated the work of a committee of experts which convened at the Institute to prepare draft implementation measures for the United Nations declaration (these implementation measures are currently before the United Nations).

18. The Council of Arab Ministers of the Interior conducted a training session in Cairo in September 1989 for senior law enforcement officials, and one of the topics was entitled "Protection of victims of crime".

19. In May 1989, a conference on the same subject was organized by the Algerian Bar Association at Batna.

20. In August 1989, the International Academy of Constitutional Law of Tunisia held a session entitled "Constitutional Law and Human Rights".

21. A committee of experts has been working at the Institute on the preparation of an Arab draft convention against torture, which is based in part on the 1984 United Nations Convention and the 1986 European Convention. The text is in the process of publication and will be widely circulated.

22. In 1989, a research project was developed by the Institute entitled "Protection of human rights in the comparative criminal proceedings of Arab States" and culminated in a major conference in Cairo in December 1989. Forty-five national reports from 15 Arab States were presented and 3 general reports synthesizing the pre-trial, trial and post-trial phases were presented. The conference was under the auspices of President Hosni Mubarak and was attended by several Cabinet officers and some 350 law professors, senior police and military officers. This study was the first of its kind and its publication will lead to a better understanding of the laws and practices of Arab States.

23. In June 1990, the Institute will start a three-year summer programme on human rights for graduate law students in Arab law schools. This programme, which will be for credit towards masters' and doctoral degrees in Arab law schools, will prepare 90 to 100 persons who will join the academic ranks of their respective universities. This new programme will further stimulate the teaching of the subject.

24. A sixth conference on teaching human rights is being considered for 1990-1991.

25. A seminar for media persons entitled "Role of the media in the dissemination and protection of human rights" is in the planning stage.

VI. RANGE OF INSTITUTIONAL PARTICIPATION

26. Altogether some 350 law professors, judges, police academy instructors and military justice personnel have been directly involved in the programmes conducted at the Institute between December 1985 and December 1990.

27. Among the participants were Cabinet or former Cabinet members, chief justices and justices of Supreme Courts, high-ranking army and police officers, and senior government lawyers.

28. Universities and institutions whose representatives participated in the Institute's Arab human rights programmes from the Atlantic to the Gulf are located in: Morocco, Tunisia, Algeria, Libya, Egypt, Sudan, Jordan, Palestine, Syria, Lebanon, Iraq, Saudi Arabia, Kuwait, United Arab Emirates and the Republic of Yemen.

VII. SIGNIFICANCE OF INDIVIDUAL PARTICIPATION

29. The calibre of personalities attending the Institute's activities attests to the support it has in academic, public and official circles. Among those who have attended are: ministers from Egypt, Tunisia and Syria; chief justices and Supreme Court justices from Algeria, Egypt, Jordan, Lebanon, Morocco, Saudi Arabia, Sudan, Syria, Tunisia and the United Arab Emirates; university presidents from Cairo, Mansourah and Mu'tah; deans of the law schools of the universities of Aleppo, Alexandria, Cairo, Damascus, Ein-Shams, Fez, Jordan, Khartoum, Mansourah, Rabat, Tanta, Tunis and Zaqaziq; directors of the judicial training institutes of Egypt, Jordan, Tunisia and Morocco; presidents of the national bar associations of Lebanon, Morocco and Syria; military procurator generals of Egypt and Tunisia; directors of police academies and research centres of the Ministries of the Interior of Algeria, Egypt, Iraq and Saudi Arabia; ambassadors from Egypt, Morocco, Syria and Tunisia; and law professors from every Arab law school.

VIII. CONCLUSION

30. The cumulative effect of these programmes and publications is expected to create a culture of respect and observance for human rights through institutionalized educational programmes. The multiplier effect will assuredly have an impact on the development of democracy and the strengthening of the rule of law in Arab societies. These programmes have already demonstrated that that they encourage and strengthen human rights; develop networking and self-reinforcing support among Arab jurists; enhance inter-Arab regional co-operation; stimulate educational and research programmes; encourage teaching; provide opportunities for exchange of individual and national experiences; provide new pedagogical models; generate a climate of openness and understanding; stimulate media and public interest; and involve public officials in a positive way.

31. These activities, which are new to the Arab world, are also unique in the third world for their intensive penetration and systematic application, and for the significant involvement of such a large number of scholars from the entire region. Never has there been such a systematic and far-reaching programme on human rights in a single region of the world.

32. The protection of human rights is one of the basic goals of justice in any society. It is also the foundation of democracy, through which the Arab world can attain peace, stability and progress. It is toward this humanistic goal that these efforts are directed.

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Sub-Commission on Prevention of
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Forty-second session
Item 15 of the provisional agenda

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written statement submitted by the Four Directions Council,
a non-governmental organization in consultative status
(category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

(15 June 1990)

GE.90-16905/4088a

TECHNICAL CONFERENCE ON SUSTAINABLE SELF-DEVELOPMENT

1. In its resolution 1990/62 of 7 March 1990, the Commission on Human Rights approved the proposal, made last year by the Working Group on Indigenous Populations and the Sub-Commission, for convening a technical conference on achieving environmentally sound and sustainable self-development for indigenous peoples, in 1991. The proposed conference is especially timely in view of General Assembly resolution 44/228 of 22 December 1989, authorizing a United Nations Conference on Environment and Development (UNCED) to be held in Brazil in June 1992. In our view, the technical conference on indigenous self-development planned for 1991 can serve as a preparatory meeting leading to more effective indigenous participation in UNCED.

2. Bearing this in mind, we would like to suggest the following agenda for the technical conference on indigenous self-development, for consideration and possible adoption by the Working Group, and the Sub-Commission, as a recommendation to the Secretary-General:

A. Indigenous economic systems and environmental management

B. Strengthening activities based on renewable resources

C. Assessing and mitigating the adverse effects of change

D. Development as a means of more fully realizing rights

E. Indigenous peoples' development and national economies

F. Discussion and adoption of conclusions and recommendations

3. It would be our hope that the technical conference could produce a practical report, containing examples of concrete experience in the realization of sustainable indigenous self-development, together with recommendations for measures to increase co-operation in this field among Governments, indigenous peoples, and the United Nations system. The report should be of such a nature that it can serve as a useful guide for strengthening national programmes that support indigenous peoples, as well as a basis for ensuring that explicit and appropriate attention is given to the situation of indigenous peoples in UNCED.

4. We would also like to suggest that invitations to participate in the conference on indigenous self-development be made to roughly equal numbers of interested Governments and indigenous peoples' organizations from all regions, and include a balanced mixture of expertise in the fields of development, environment, and human rights.

5. Invitations should be extended to the United Nations Development Programme, the United Nations Environment Programme, the specialized agencies, the regional economic commissions, the Director-General for Development and International Economic Co-operation, and the Secretary-General of UNCED. Invitations should also be made to the Chairman of the UNCED Preparatory Committee, and to the UNCED host country. The Chairman of the Working Group on Indigenous Populations, and Special Rapporteur of the Sub-Commission on Economic, Social and Cultural Rights, should be invited to participate ex officio.

6. We note that Article 7 of the ILO Indigenous and Tribal Peoples Convention, No. 169 (1989), contains explicit provisions on the right of indigenous peoples to control their own development, protect their territorial resources and be protected from environmental degradation. Participation of the ILO in the technical conference is consequently essential.

7. In view of the great importance of the technical conference and the desirability of achieving the widest possible participation, the Secretary-General should be encouraged to seek a host country as well as voluntary contributions to facilitate larger indigenous attendance. We believe that convening the technical conference in Latin America, rather than at Geneva, would mobilize more representative indigenous participation and increase the visibility and practical results of the conference.

8. In relation to the UNCED preparatory process, we hope the Working Group will also recommend, through the Sub-Commission, that:

(a) The UNCED Preparatory Committee should consider placing on the agenda for UNCED, "the role of indigenous peoples in managing and conserving their own lands and resources, and legal measures, such as existing and future conventions, for promoting this role";

(b) The Special Rapporteur of the Sub-Commission on Economic, Social and Cultural Rights, Mr. Türk, in consultation with the Special Rapporteur on human rights and the environment, Mrs. Ksentini, and with the other members of the Sub-Commission and indigenous peoples' organizations, should prepare an outline of a possible study of land rights and land tenure systems as factors in development, protection of the environment, and protection from ethnocide or ecocide.

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Item 6 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International Federation Terre des Hommes, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

[11 July 1990]

1. The International Federation Terre des Hommes is very concerned at the situation in the territories occupied by Israel. According to an assessment by the Palestine Human Rights Information Centre, from the beginning of the intifada up to 30 April 1990, 898 persons, 219 of whom were children, were killed in confrontations with the army and some 89,870 persons were wounded. Moreover, 9,250 persons were placed in administrative detention. The Israeli authorities imposed 3,408 days of curfew in the West Bank and 3,540 days in the Gaza Strip. Also, 86,114 trees were uprooted and 1,428 dwelling places demolished.

2. The civil and political rights of the Palestinians are constantly being violated and the Israeli authorities are using every means to repress the popular uprising, such as firing real or rubber bullets, using smoke bombs in closed areas, poisonous gases, administrative detention, arbitrary arrest, curfew etc. Criminal sentences are particularly harsh: stone-throwing, for example, is frequently punished by 10 years' imprisonment.

3. So far as economic, social and cultural rights are concerned, the policy of the Israeli Government in the occupied territories is having pernicious effects and is aimed at inciting Palestinians to emigrate. The economy of the occupied territories is restricted, underdeveloped, fragmented and fragile. Israel controls all means of production - land, water, movements of capital and labour - and hampers any efforts at internal development. 1/ With the development of settlements, an increasing area of fertile land is being confiscated. These lands constitute an essential source of income for many of their owners. Water resources, which are very important in a region where rainfall is scarce, are diverted by the military authorities, which generally prohibit the boring of new artesian wells by Palestinians. 2/ In addition, a large number of lemon and olive groves have been destroyed and tens of thousands of trees uprooted.

4. Israeli management of the economy of the occupied territories has caused a state of dependence in these territories. Almost 40 per cent of the active population works in Israel and almost all wages are returned there to cover a chronic trade deficit. A worker from the occupied territories does not earn even a third of the wages earned by an Israeli counterpart with equal qualifications and a Palestinian worker receives no social security benefits despite paying regular contributions. The development of human resources is seriously compromised as, for the third year running, the universities are finding it impossible to function as they should.

5. At the previous session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the International Federation Terre des Hommes submitted a statement concerning the health situation in the occupied territories (E/CN.4/Sub.2/1989/NGO/3). Regrettably, the situation has not improved this year. The Israeli authorities' use of restrictions on health care as a means of repression in order to put an end to the Palestinian uprising constitutes a violation of the fundamental right to health and life.

6. The situation in the hospitals of the occupied territories is deteriorating. The authorities prevent the building of new hospitals despite the pressing need for modern structures, and they impose restrictions on the import of health equipment and on the hospitalization of patients from the occupied territories in Israeli hospitals. They are also encouraging a decline in the number of professional health workers by refusing work permits and closing nursing schools. There are three times fewer doctors per inhabitant in the occupied territories than in Israel. 3/

7. Since the beginning of the intifada, the wounded have been constantly denied access to hospitals or have been detained; some have even died in prison. Hospitals have been attacked, clinics closed, medical equipment and ambulances confiscated by the army and ambulance drivers insulted. Professional health workers are constantly prevented from doing their work

and are arrested and placed in administrative detention. They are also subjected to pressure to reveal the identity of wounded persons. The long periods of curfew imposed by the army prevent access to refugees camps and the wounded; for this reason, many women have had to give birth without medical assistance. Under curfew, water supply becomes difficult and children lack basic products. The cost of health care has increased for Palestinians.

8. The Al-Ittihad private hospital in Nablus has had to adapt to the situation described above and become an emergency hospital. It has been attacked many times by the army: on 2 September 1989, for example, the hospital was closed for three hours, ambulances confiscated, staff beaten and interrogated and at least two wounded persons arrested. In the second year of the uprising, the hospital cared for fewer wounded persons than in the first year but the number of children admitted increased. This state of emergency prevents the staff from undertaking further training abroad and the long curfew at Nablus makes it impossible to extend or modernize the hospital.

9. In the Gaza Strip, there is a lack of nurses and doctors the cost of sickness insurance doubled during 1989 and there are only 16 ambulances which are under-equipped. The Shifa hospital, the largest public hospital in Gaza, is poorly maintained and suffers from a lack of hygiene. About 250,000 Palestinians in the Gaza Strip live in eight refugee camps which have only 10 ambulances. Water has been restricted in some of the camps. The Israeli army often attacks the hospitals with tear-gas thrown from the roof. Doctors in Gaza are prevented from going abroad or even to Israel for congresses. The state of medical care in the Gaza Strip depends to a large extent on the Israeli authorities, and the inhabitants are dependent on the decisions of the military administration for medical care. 4/

10. To remedy this situation, the population has tried to organize itself, with professional health workers from the occupied territories establishing voluntary medical committees equipped with mobile hospitals. Such committees include the Palestinian Medical Assistance Committees of Dr. Mustafa Barghouty, who is working together with a member of the International Federation Terre des Hommes. These committees are active in the field of health education, preventive medicine and health care; they comprise 500 doctors and are equipped with a mobile and a permanent centre but have been hampered in their work.

11. In addition, the International Federation Terre des Hommes is deeply concerned about the fate of children in the occupied territories. According to the Palestine Human Rights Information Centre, between 9 December 1987 and 1 June 1990, 227 children under the age of 16 were killed, 207 by Israeli authorities and 20 in circumstances which were not clear. Health care is also insufficient; some children are suffering from malnutrition and a lack of hygiene and many are traumatized by the violence which they witness daily. In the Gaza Strip, the child mortality rate is 28.1 per thousand according to the Israeli Minister of Health and 50 per thousand according to local sources, whereas it is 14 per thousand in Israel according to UNICEF.

12. The International Federation Terre des Hommes would wish to recommend to the Sub-Commission on Prevention of Discrimination and Protection of Minorities that the Government of Israel be urged to:

(a) Agree to negotiate a peaceful settlement of the conflicts with all forces involved;

(b) Release all professional health workers in administrative detention;

(c) Authorize the appropriate equipment of ambulances and their operation during curfew;

(d) Simplify procedures for acquiring medical equipment;

(e) Prohibit the incursion of armed forces into hospitals and the arrest of wounded persons being cared for in them;

(f) Facilitate hospitalization in Israel of Palestinians suffering from serious diseases;

(g) Recognize the value of Palestinian assistance committees and stop hampering their activities;

(h) Provide children with the full protection to which they are entitled.

Notes

1/ International Labour Office, International Labour Conference, 77th session, Report of the Director General, Appendices, Vol. 2, 1990, pp. 6-8.

2/ Idem., p. 38.

3/ Figures provided by the Union of Popular Committees for Health Services.

4/ Association of Israeli and Palestinian Physicians for Human Rights, Report on the Condition of Health Services in the Gaza Strip, August 1989.

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Item 17 (a) of the provisional agenda

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVEL

PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH

Written statement submitted by the International Federation Terre des Hommes, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[11 July 1990]

GE.90-17026/7555A

STREET CHILDREN

1. The International Federation Terre des Hommes (FITDH) is deeply concerned about the question of street children. The total number of such children in the world is variously estimated to be between 10 and 100 million, depending on the source of information. 1/ This substantial variation may be explained by the fact that the figures probably cover different age groups and that some include only children genuinely living in the street, while others include the large number of children who have kept contact with their families but, for example, work in the street.

2. While estimates may vary, there is complete agreement on one point, that the total number of children is constantly increasing and may well soon double unless preventive measures are taken or supported quickly. Street children are a purely urban phenomenon, due to population growth in the big cities in both the industrialized and the developing countries. There are, for example, several thousands of street children in New York. In Africa, it is estimated that by the year 2000 about half of the population will be living in towns. 2/ Since the number of street children grows faster than the urban population as a whole, all the evidence suggests that it will go on increasing.

3. There are a number of reasons why children are forced to live in the street, namely:

(a) Poverty and difficult economic circumstances;

(b) Deterioration of the environment;

(c) Migration from the countryside;

(d) Increased rate of urbanization and a habitat which no longer satisfies the socio-cultural aspirations of the populations concerned;

(e) Breakdown of the family unit and values;

(f) Growing number of single mothers with children;

(g) Family violence.

4. The situation of children living in the street is extremely difficult, but in most cases this is their sole means of survival. For that reason it is often not seen as a problem by the people concerned, but as a solution and a healthy reaction by an intelligent child facing a situation to which there is no other answer.

5. Children who live in the street confront the problems of violence and survival every day. They have to cope and find ways of keeping alive and so they often form gangs. Some continue to go to school while working, but generally without success, because life in the streets has psychological consequences which affect their ability to concentrate. The jobs they do reflect keen powers of observation and an ability to exploit their environment: they wash or guard cars, work as flower-sellers or pedlars, etc. Others are forced to fall back on demeaning activities, such as prostitution, begging, delinquency or theft. In all cases the children are vulnerable to action by the authorities and often meet with police violence and imprisonment.

6. Street children age prematurely as a result of their living conditions, but even though they are independent and have acquired responsibilities beyond their years, they are still children and like all other children, they need affection, protection, education, health care, fair remuneration and respect for their rights. When these are lacking, their future is obviously jeopardized.

7. FITDH has evidence of the situation of street children in Colombia. A background of violence and poverty forces these children to live in the street. Young people often drop out of school and end up without jobs and liable to police violence. Out of 25 young people who finish their secondary education in a small town in Colombia, for example, on average one goes to university, two join the police, two do their military service and the rest often get involved in armed opposition movements. Many die prematurely. Many of the young children who remain in the street take drugs and get run over because they lose control of their movements. Children aged 12 to 16 often kill each other to settle scores. Those aged over 16 may be deliberately killed by self-defence groups or paramilitary forces, often with police backing. Both in Cali and Bogotá many street children have been killed, generally at night.

8. In Haiti, the average age of young street people, the vast majority of them boys, is 13. Most of them were born outside the capital and often they are in the street because they have run away from their homes in the countryside. Most of them are victims of wretched socio-economic conditions and domestic violence. There has been a breakdown of the traditional big family in the rural areas. The reduction of the actual space occupied by the family group, together with the pull of the capital, have led to the emergence of marginalized areas lacking elementary services. Family support has declined, young people have ultimately been excluded from their environment and the job market and end up in the street.

9. In an effort to deal with this situation, a member of FITDH is backing a project in Haiti for the reintegration of young street people into society and their families. The project is attempting to get young people involved either in the educational system, through pre-apprenticeship activities, or in small-scale craft enterprises. It also provides a health and nutrition programme, as well as accommodation and clothing, pending the reintegration of young people in their families, and prepares them for personal relations and life in society.

10. In Senegal many young people end up in the streets of Dakar, looking for some means of existence, and are in danger of lapsing into crime. A member of FITDH is backing a project to establish friendly relations between the young people and the organizers so that they can learn a trade and improve their image with the population and the authorities. Both boys and girls are involved in the project and the sale of the articles they make gives them a better chance of earning their keep. The project also hopes to develop an African support network for street children and help to reintegrate them in their families. Lastly, in agreement with the police and the legal authorities, a kind of identity card has been introduced, giving the holder an identity document which can be presented when required. The young people themselves are in charge of arranging the distribution of the cards and, if necessary, their withdrawal.

11. Such projects show that street children do not present an insoluble problem. Some remedial measures could be applied quickly and at little cost. In the effort to remedy the situation, the main aims in every case should be to reintegrate young people in their families, to provide vocational training, to set up a basic service, to negotiate with the police and legal authorities and to respect the street children's dignity. The young people's intelligence and creativity in dealing with street problems should also be trusted, so that original and suitable solutions can be found. One programme in Mali, for example, has enjoyed some success. Five young people decided to tackle the mosquito problem by setting up a paid spraying service. A short training course brought them up to an adequate standard and they are already in considerable demand. They are now running a small enterprise with much potential, because mosquitoes have multiplied in some increasingly unhealthy parts of Bamako and are extremely troublesome. 3/

12. In conclusion, FITDH wishes to recommend the Sub-Commission on Prevention of Discrimination and Protection of Minorities to request all States concerned to:

(a) Study the causes of the situation so that appropriate preventive measures can be taken;

(b) Recognize the value of the work done by non-governmental organizations for street children;

(c) Support this constructive work by all suitable means;

(d) Take action to correct the public image of street children by not representing them as either completely innocent victims or completely incorrigible criminals;

(e) Encourage as far as possible the unity and values of the family unit;

(f) Develop an informal education system suited to the needs of working children.

Notes

1/ Patricia Smyke, "Caught in the Cross Currents", Non-Governmental Organizations Committee on UNICEF, 1989, p. 24.

2/ Moussa Sissoko, "Les enfants de la rue, l'expérience d'un éducateur spécialisé au Mali", L'enfance dans le monde, BICE, vol. 16, No. 3, 1989, pp. 36-37.

3/ On street children, see also Jean-Jacques Fontaine, Enfants de la rue, Terre des Hommes, Switzerland.

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Forty-second session

Item 8 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by FIAN (Food first International Action Network)
a non-governmental organization in consultative status
(Roster)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[23 July 1990]

GE.90-17029/7203A

Concerning: Mr. Danilo Türk's report on the realization of economic, social and cultural rights.

1. The Food first International Action Network (FIAN) was founded in 1986 as an international organization for the right to food. A number of the founders have been involved in the conceptual discussions and development of the right to food (as a fundamental economic, social and cultural right) since the early eighties. Since then FIAN has been concentrating on the right to feed oneself focusing on land rights, peasants' rights and agricultural workers' rights.

2. We believe Mr. Türk's focus on extreme poverty in his preliminary report on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1989/19) is extremely important. In situations of extreme poverty the right to food is crucial. Moreover, the right to food and the obligations deriving from it could serve as a "test case" for economic, social and cultural rights.

3. People need access to food in dignity. This involves the access to food-producing or income-generating resources, e.g. land or sufficiently paid work possibilities. In many rural situations access to land is the immediate remedy and often the only one. The reality of very many of the poor today is a rural reality. And the bleak situation of economic, social and cultural rights in third world cities is often closely related to or even caused by violations of the right to feed oneself in the rural setting.

4. FIAN congratulates Mr. Türk on his preliminary report and welcomes his call for a more concrete follow-up to his present study by going into a detailed analysis on the issue of land rights and agrarian reform (paras. 49 and 50).

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Item 13 of the provisional agenda

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Written statement submitted by FIAN-Food first International Action Network a non-governmental organization in consultative status
(Roster)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[23 July 1990]

GE.90-17032/4135a

HUMAN RIGHTS AND THE ENVIRONMENT

The environment and the right to food

1. The emphasis in the work of the Food first International Action Network (FIAN) on the right to food is on the issue of land rights of peasants, landless agricultural workers and indigenous peoples. For these groups adequate land provides the only secure access to food in human dignity. Hence the realization of their right to food depends on their access to land. Degraded land and a polluted atmosphere interferes with their capacity to produce adequate food, as well as with other rights such as the right to an adequate standard of living generally, to health or to life.

2. The land rights of peasants or indigenous peoples are violated because their land is ecologically damaged or destroyed or taken away and ecologically destroyed. For example, the land rights of indigenous peoples living in the rain forest are violated, as in the case of the Huaoranis in the Ecuadorian Amazon, who are suffering from oil exploitation and rapid deforestation (as landless settlers move in, they themselves victims of the lack of agrarian reform elsewhere in Ecuador). The rights of tribal and rural peoples are often violated by large dam projects (such as on the Narmada river, India). Land grabbing and environmental destruction affects groups such as the M'Bya and Ache in Caazapa, Paraguay, whose land is being occupied and their forest destroyed at an alarming rate.

3. There are also violations of the peasants' right to (ecologically stable) land through processes of marginalization, leading to environmental degradation. Destruction of rain forest or mountain slope and other marginal lands by peasant colonization is taking place as a reaction to the absence of agrarian reform (Brazil, Andean countries). Good agricultural lands in ecologically stable regions are often occupied by landlords (as a consequence of colonial history) or rich firms and land speculators. As a strategy to avoid agrarian reform in these regions, these interest groups sometimes promote "colonization instead of agrarian reform", which leads eventually to the destruction of ecologically fragile lands.

Comments on the links

4. It is the peasants and indigenous peoples who suffer already today from environmental degradation in relation to their human right to food, because they are pushed to the ecological margins of society. As well as being forced to cause environmental degradation, they are the first to suffer from effects which will make much larger sectors of mankind suffer in the future unless the ecocide and climatic hazards are prevented. They therefore flash the warning lights for all of us.

5. Extreme poverty has been recognized by the World Commission on Environment and Development in their report "Our Common Future" as a main cause of environmental degradation. In discussing the right to a clean environment, one should therefore take into account the rights of the most vulnerable sectors of society. The approach along these lines of the Committee on Economic, Social and Cultural Rights, and of the Sub-Commission's special rapporteur on the realization of economic, social and cultural rights is to be welcomed.

6. Poor peasants, rural workers and indigenous peoples are "natural ecological allies" of tomorrow's humankind, because they have a strong and immediate personal incentive to defend their rights which naturally include environmental protection (the example of Chico Mendes and his seringeiros (rubber tappers) comes to mind).

7. One can also note the ecological aspects ("sustainability of access") of the right to food as described in Asbjørn Eide's report on the right to adequate food. (E/CN.4/Sub.2/1987/23).

The right to a clean environment

8. As environmental degradation becomes more serious, so does concern to prevent it. The Sub-Commission is not the only international body to be discussing environmental rights. Indeed, the right to a clean and healthy environment has been more and more widely recognized in recent years. The African Charter on Human and Peoples' rights, in force since 1986 recognizes this. The protocol on economic and social rights of the American Convention on Human Rights contains clauses on the right to a clean environment. The group of legal experts on environmental law of the World Commission on the Environment and Development has as its first principle the right to a clean environment. The Hague Declaration, adopted in 1989 by 40 States from a variety of political systems also starts with an acknowledgement that a right to a clean environment exists.

9. Most recently, in their ministerial declaration adopted in Bergen in May, Ministers from East and Western Europe and from North America resolved to " ... safeguard the rights of individuals and concerned groups to have access to all relevant information and to be consulted and participate in the planning and decision-making concerning activities which may affect health and environment, with reasonable access to appropriate legal administrative remedies and redress." In this connection, they resolved to contribute to the preparation of a document on environmental rights and obligations (Draft Charter of Environmental Rights and Obligations of Individuals, Groups and Organizations) for possible adoption at the 1992 United Nations Conference on Environment and Development (UNCED).

Suggestions for action by the Sub-Commission

10. Work is already well under way on the Charter of Environmental Rights to be submitted to the 1992 UNCED. The Sub-Commission has clear expertize in this field from which UNCED and its Preparatory Committee could benefit. FIAN would therefore propose that:

(a) The Sub-Commission give priority attention to working on a legal instrument of environmental rights. We believe that this is necessary as the link between the environment and human rights are clear, and as many declarations on environmental rights have already been made and it is now a legally binding instrument that is needed;

(b) The Sub-Commission designate one or two of its members to represent it at the meetings of the group that is drafting the Charter of Environmental Rights and Obligations, and request that this group formally invite these members to participate in its work.

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Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International League for the Rights and the Liberation of Peoples, Service, Justice and Peace in Latin America, and the International Association of Democratic Lawyers non-governmental organizations in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 August 1990]

1. For years the international community has striven to establish principles, standards and procedures related to the protection, respect and promotion of human rights. The Sub-Commission has made valuable and timely contributions to this work.

2. Nevertheless, many States systematically infringe the standards of behaviour and international law which they themselves have ratified, leaving unpunished those who have committed aberrant crimes and crimes against humanity against our peoples, including torture, assassination, imprisonment, and the kidnapping and enforced disappearance of thousands of people.

3. This situation persists, and is even deteriorating, in many countries where the Government has changed from a dictatorship to a constitutional system and seeks to bolster its unstable position, if not by violating human rights, then by establishing laws or mechanisms of impunity that shield the perpetrators of such violations. This produces a state of defencelessness and insecurity among those who are the most vulnerable and, as a logical consequence of this, legal and democratic institutions lose their credibility.

4. Impunity is a constant threat and makes it possible for crimes which have gone unpunished to be repeated. In that connection, the report submitted by the Working Group on Enforced or Involuntary Disappearances to the Commission on Human Rights at its forty-sixth session, last February, devoted special attention to impunity as an important factor in the continuation of the phenomenon of enforced disappearance (E/CN.4/1990/13).

5. Particular attention should also be given to the consequences of impunity on the indivisibility of civil and political rights and economic, social and cultural rights, given that the systematic disregard of the first group is usually linked to the orchestration of policies which violate the second. In the case of Latin America, for example, one can see that the repressive policies implemented by military dictatorships have been followed by harsh adjustment plans, involving hunger, unemployment and poverty for most of the population.

6. In February 1988, 21 non-governmental organizations submitted a communication to the Commission on Human Rights of the United Nations Economic and Social Council, reporting on the current situation with regard to impunity and emphasizing, inter alia, that "there can be no real democracy in a society where there is no justice, where murderers and torturers go free, where victims can achieve no legitimate rights for their loved ones and there is no accounting of what happened" (E/CN.4/1988/NGO/51).

7. Concerned at the serious situation constituted by impunity, and reiterating the requests made in the communication quoted, the International League for the Rights and the Liberation of Peoples and Service, Justice and Peace in Latin America believe that the Sub-Commission should:

(a) Study the treatment, increase and dissemination of impunity;

(b) Take measures designed to prevent impunity from infringing not only existing international legislation but also the right of peoples to life and development; and

(c) Request Governments to comply with the treaties, conventions and protocols which they have signed.

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Agenda item 7

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS

Written statement submitted by the International League for the Rights and the Liberation of Peoples, a non-governmental organization in consultative status (category II).

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 July 1990]

1. The World Economic Survey, 1990, produced by the Department of International Economic and Social Affairs of the United Nations (E/1990/55.ST/ESA/218), indicates that the economic growth of developing countries has been heavily reduced in 1989 and that, particularly in Latin America and the Carribean, the production per capita has decreased while in Africa the rate of economic growth was inferior to the demographic increase. The Survey forecasts that the results of 1990 will be similar to those of 1989. After giving the figure of 32 thousand million dollars for the net transfers of resources of the developing countries to the developed countries in 1989, it comes to the conclusion that the Brady Plan does not ensure a sufficient debt reduction to have a substantial impact on the transfer of financial resources to the exterior and would therefore not solve the debt problem. "Indeed", says the Survey, "the time may finally be approaching when the international community could pledge itself to end the developing country debt crisis, instead of just managing it".

2. In order to deal with these items from the point of view of the peoples who suffer from this situation, representatives of seven peoples among the poorest and several popular leaders met in Houston, Texas, from 6 to 8 July 1990 under the aegis of TOES (The Other Economic Summit), the International League for the Rights and the Liberation of Peoples, CEDETIM and AGIR ICI. They produced a document which was signed by Luiz Inacio da Silva from Brazil, Cuauhtemoc Cárdenas Solórzano from Mexico, Adalberto Carvajal Salcedo from Colombia and Jesse Jackson from the United States. The text is as follows:

A CALL FOR ACTION:
COMMUNIQUE OF LEADERS ATTENDING THE PEOPLES' SUMMIT

July 8, 1990

We have come to Houston as active participants in popular and democratic social and political movements in our own countries, to explore shared concerns and to strengthen solidarity ties as we carry forward our common struggle to build more just, democratic and sustainable societies. The Seven Industrial Countries Economic Summit (G-7) is convening also in this city to discuss and to adopt economic directives that will affect us all.

While recent political and social events, particularly in Eastern Europe, move the international system away from ideological blocks and military alliances, the rich industrial countries are still engaged in their attempt to make a new division of the world among themselves creating new dominant blocks and new spheres of influence. On the face of this attempts we join here to echo the hopes of millions whose voices won't be heard in those discussions. The countries of the Third World do not pretend to serve as economic appendixes of the new arrangements.

We reaffirm our conviction that until Third World nations and their peoples have fully empowered themselves to direct their own destinies, we will not be able to build an international economic order truly equitable and sustainable. It is abundantly clear that while the present international system favors the interests of highly industrialized nations it frustrates at the same time the hopes of millions of people in the Group of Seven countries.

A truly democratic effort to organize world economy would not ignore economic and social realities.

First, it is a fact that for most of the third world the past decade has been a lost decade. For Latin America it has represented a drastic decline of living standards in some countries to levels comparable to those existing forty years ago. The most recent United Nations' "World Economic Survey" recognizes that the Latin American economy has in 1989 the smallest growth among all world regions and should show even bleaker results in 1990. In Africa this economic decline has already reached catastrophic social dimensions. For the poor and middle classes in the United States, the 1980's was also a lost decade. Average real wages of industrial workers dropped below their 1973 level and the proportion of income going to the top and bottom twenty percent of the population became more unequal than in 1950.

Second, the direction of flows of international resources drained the Third World in many ways. The tendency to concentrate wealth in the hands of the very few who control economic resources both in affluent societies and in

the Third World has continued unabated. The external debt has created a system of new colonial tributaries. Latin America, for instance, has in the past decade transferred about 250 billion dollars abroad, vital capital for our development. In addition to these transfers, billions more are siphoned off by the Third World rich to bank accounts in the Group of Seven countries. Terms of trade consistently undervalue Third World exports. Current attempts to liberalize world trade, as it is proposed by the Group of Seven and now being negotiated through GATT does not address this imbalance, indeed it is likely to make them worse. Industrial economies derive also great benefit from the use and abuse of the manpower of the third world.

Third, an environmental mess has been created by more than half a century of unbridled economic growth. Social deprivation and poverty have also contributed to the degradation of the ecologicals systems. While all countries of the world are affected by this environmental decline, it is the lifes of people in poor communities in urban and rural areas that are the most affected and which carry a disproportionate share of the burden.

Social injustice, political intolerance, perennial decline in living standards, environmental destruction, continue to characterize social life in most of our countries. This is often accompanied by a profound moral-spiritual crisis. These conditions are caused primarily by unfair world structures and abuses and impositions of the rich and powerful countries over the poor. The dominant elites of our own countries have also contributed to this predicament. They have for centuries appropriated resources, controlled the state and subordinated our people to their interests. The absence of democratic institutions and public accountability has exacerbated bureaucratic corruption, social degradation, environmental decay and external subordination.

In contrast with all the positive changes and encouraging trends that we find in the world today, these overwhelming social and economic realities are not being addressed. We acknowledge these changes but we must affirm that we still don't live in a better world. For millions of people in the Third World as well in the industrialized countries, the future offers no hope. However, a sense of ideological triumph in industrialized countries has created the false notion that we have definitely entered an era of freedom and democracy. The collapse of the bureaucratic authoritarian regimes in the East cannot be construed to represent the decline of social ideals. The replacement of the post war political order of the East does not exonerate Western industrial countries of their own historic responsibilities. The job of building equality and justice in democratic societies is the highest challenge humanity faces as we enter the twenty first century. These ideals are alive and vigorously pursued by popular movements all over the world. Competition and savagery is not a viable alternative for the people. Either the international community builds an economic order where equity and efficiency are reconciled or our world will face a social and environmental decay of immense proportions.

We demand the end of all conditionalities imposed by rich countries and their international financial institutions like the IMF and World Bank. Overall impositions of neo-liberal adjustments and policies which do not take into consideration our reality and our peoples' desires are unacceptable.

We don't want to be isolated from world structural changes now in course in production technology and trade. We know of the real difficulties to transform production structures build in conditions of late development into a

new dynamic and democratic international integration. Our industrial growth was not accompanied with social and educational developments, compatible with the new requirements in technical, professional and intellectual capacity. Our adjustment policies must be of productive change with equity, revenue distribution and environmental protection. We need to break with the past, overcoming our external and social debts and opening the doors of our future incorporating technological progress in a new integration with the world economy.

The resolution of the tremendous problem of the external debt requires a political decision by governments of both debtor and creditor countries. In relation to the overall debt creditors have already been paid more than a fair amount. Brazil alone has paid 91.5 billion dollars between 1980 and 1988. Nonetheless, largely due to exorbitant interest rates fixed by economic trends in the industrialized world, the debt has increased by 60.9 billion dollars in the same period. Also it is already widely accepted that this debt is realistically unpayable. The overall solution is not simply economic but political, and as such should be considered by governments of all countries involved. To effectively stand before the cartel of creditors, debtors must design and pursue a common strategy. This is particularly urgent in the case of Latin America. Up to now, debtor countries have chosen to negotiate one by one with creditors and the US government, damaging the overall interests of the region and increasing the individual vulnerability of each.

The indiscriminate liberalization promoted by industrialized countries, assumes that we are all equal partners when it is well known that huge economic, political and social differences exist among world countries. Equal treatment to unequal partners leads to the deepening of inequalities.

Economic integration in trade blocks configured by industrialized countries is not fatal and inevitable. Latin American Integration is not under any conditions a lost cause. It is a strategy consciously abandoned by our governments who accept passively a bilateral relations with industrialized countries. Courage and political vision is needed to rescue Latin American integration as a viable objective of our peoples.

In the construction of a new system of international relations, the developed world has a special responsibility to break with the past. We draw attention to the multifaceted ways in which the Group of Seven governments have combined military, economy, political and diplomatic aggression to attack democratic achievements and organizations around the world. Such intervention as Low Intensity Warfare must be condemned and abandoned as public policy.

Drug trafficking is a transnational business based in the US. We must fight to eliminate drug trafficking, production and consumption. We cannot accept the use of the drug problem as an excuse for US military and political intervention in Latin American countries, as recently happened in Panama. We urge all of the countries of the world to combat with equal energy production, trafficking and consumption of drugs, but in a manner which respects the sovereignty of every nation.

The dialogue of leaders of popular movements and parties at this peoples summit must be continued and expanded to include representatives from other countries. The most important development in this recent period has been the growth and expanded activity among non-governmental organizations, including

trade unions and other organizations of workers and farmers, popular political parties, and grass roots peoples' movements have grown within countries and have begun to reach out across national political boundaries to join hands in pursuit of common goals. We came here to strengthen ties amongst peoples. We are part of a common cause to defend the national hopes and cultures of the people of the world against trends of domination and new colonialism. The opportunity to strengthen ties of solidarity in our common struggle and to carry forward the work begun in Houston of developing a more comprehensive, popular, democratic agenda for economic and social change, is a source of renewed vitality for our movements as we face the challenges of the nineties.

Luis Inácio Lula da Silva, Brazil

Cuauhtemoc Cardenas Solorzano, Mexico

Adalberto Carvajal Salcedo, Colombia

Jesse Jackson, United States of America

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ELIMINATION OF RACIAL DISCRIMINATION

(a) MEASURES TO COMBAT RACISM AND RACIAL DISCRIMINATION AND THE ROLE OF THE SUB-COMMISSION

Written statement submitted by Disabled Peoples' International, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[1 August 1990]

1. Disabled Peoples' International has raised the human rights dimension of the crime of apartheid in many of its written and oral statements. We are particularly pleased that the topic of apartheid and disability was included in the mandate of the Special Rapporteur for human rights and disability and anticipate that the topic will receive thorough attention by the rapporteur. At this time we wish to submit some additional comments on apartheid and disability.

2. Popi Buthelizi last walked on 16 June 1976, the day students in the black township of Soweto peacefully demonstrated against inferior education. She was 17. As she stated "That evening after the march I was walking to my aunt's house to collect my books when I was shot in the back between the shoulder blades". Three days later she regained consciousness in a ward in Soweto's Baragwanath Hospital, where she remained for eight months with seven other students also disabled after being shot.

3. Apartheid, a crime against humanity, is resulting in an increasing number of black disabled people - a number far out of proportion to incidence of disability among the white community. In addition to people beaten or gunned down who survive disabled, crowded townships, unemployment and poverty foster disabling diseases like typhoid and polio which have been all but eliminated in the white population. Black workers do the bulk of unskilled work which carries with it the highest risk of injury in the mines and factories. The crowded, segregated black hospitals cannot provide the necessary care for disabled people no matter how courageous and dedicated the staff

4. Medical professionals estimate that many of those with spinal injuries will not live longer than four years in the segregated black townships and rural areas. Black persons with paraplegia and quadriplegia die from kidney failure as a result of infection, or they are killed by septicaemia resulting from skin ulcers - almost unheard of among the white disabled population.

5. Bad as the hospitals are, some persons with disability purposefully injure themselves so that they will not be returned to the townships where conditions are even worse.

6. Disabled Peoples' International welcomes the efforts made by our sister organization the Disabled People of South Africa (DPSA), a non-racial, apolitical disability rights organization providing a voice not only for the disabled people but for all those who seek to end the divisions and conflicts that infect South Africa.

7. On 10 April 1990, DPSA organized a demonstration in Soweto, which brought together more than 250 disabled peoples from all over South Africa. William Rowland, co-Chair of DPSA, estimates 12,000 to 14,000 people have been disabled by apartheid and violence in the past several years alone. Friday Mavuso, DPSA co-Chair, stated: "We are the victims, the end result of violence. Do we really want a South Africa full of disabled people". Many demonstrators carried placards reading "Shot in 1976".

8. A recent DPSA statement stresses "the conditions of poverty and unequal opportunity arise from disadvantages which are economic, social, and political. We believe that this situation has been created by the policy of apartheid which includes unequal pensions, unequal education and unequal hospital facilities. Until this changes, our people will remain handicapped." A statement issued on 5 April 1990 points out: "To be disabled in South Africa is a terrible fate. For the vast majority it means a life of poverty and isolation, facing discrimination on all fronts. The few support services which exist for disabled people are hopelessly overburdened and already have little to offer the majority of disabled people. There is nothing for those now being disabled by the violence. DPSA therefore joins in the calls by political leaders for an immediate end to the violence by all parties. We especially condemn the use of excessive methods of crowd control by the security forces."

9. Disabled Peoples' International renews its commitment to full freedom, full service and full participation for all members of South African society. International Chair, Mr. Joshua Malinga (Zimbabwe), stresses that the fight against racism is part of all areas of disability rights and that social

justice "must permeate throughout the whole of society". Joining the nearly 100 DPI national organizations in the fight against racism and full rights for all persons with disability are our new Executive Director Henry Enns (Canada) and eight new member organizations in several categories: Personnes Handicapées de l'Algerie, Union des Personnes Handicapées du Burundi, China Disabled Persons' Federation, COCEMFE of Spain, Lega Nazionale per il Diritto al Davoia degli Handicappati of Italy, Society of Abilities for the Physically Handicapped of Uganda, Association Guinée des Sourds and Groupement pour l'Insertion des Personnes Handicapées Physiques of France.

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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by Friends of the Earth, International Educational Development, Inc. and the Sierra Club Legal Defense Fund, non-governmental organizations on the Roster, and Disabled Peoples' International and the International Indian Treaty Council, non-governmental organizations in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 August 1990]

1. The Sub-Commission, in its decision 1989/108, asked Ms. Fatma Ksentini to prepare a concise note on the methods by which a study of human rights and the environment could be made. Non-governmental organizations were asked to submit relevant information and observations to assist Ms. Ksentini.

2. The Sierra Club Legal Defense Fund submitted two papers to Ms. Ksentini (one in September 1989 and the other in June 1990) setting out its views preparatory to her working paper. We now join with the Sierra Club Legal Defense Fund in urging that the Sub-Commission appoint Ms. Ksentini as

Special Rapporteur to prepare a comprehensive study on this long overdue and increasingly more urgent human rights issue. We are equally convinced that this study will become one of the major documents in the field of human rights in the years to come.

3. The Commission on Human Rights, in its resolution 1990/41 of 6 March 1990, has already welcomed the initiative of the Sub-Commission on this topic. In introducing the resolution, Mr. Vassilenko (Ukrainian Soviet Socialist Republics) pointed out that rapid scientific and technological progress had a negative side as well - irreversible changes in the environment that pose a threat to human rights (E/CN.4/1990/SR.52/Add. 1 at para. 6). Mr. Vassilenko also indicated that standards for effective legal safeguards should be in place without delay in the interests of both individuals and societies and that such standards are part of international human rights standards (E/CN.4/1990/SR.46 at para. 58). Mr. Ndiaye (Senegal) stressed the need for accurate information regarding environmental matters as well as the urgent need to devote more attention to environmental degradation "to contribute to the promotion of human rights" (E/CN.4/1990/SR.46 at paras. 54-55). We most strongly concur with these Commission members.

4. Appointment of a rapporteur and preparation of a comprehensive study is particularly important now because of the United Nations Conference on Environment and Development to be held in June 1992. The Commission also recognized the importance of the topic to the Conference and in operative paragraph 2 of its resolution 1990/41 asked the Secretary-General to transmit the resolution on human rights and the environment to the Conference Preparatory Committee. A Sub-Commission study, even if not in final form, could have a considerable impact on the work of the Conference. Indeed, without a significant human rights component to its work, there is a risk that the Conference will lack relevant input and, as a result, will be of only short-term or marginal use to the international community. Because of our high commitment to this topic, we will do whatever we can to assist the rapporteur prepare a meaningful working draft of the study by 1991 so that it can be presented at the Conference.

5. While recognizing that all areas of human rights law are affected by environmental or ecological damage or destruction, and in anticipation of approval of the rapporteur, we herein set out several critical areas of environmental human rights that merit special consideration and that should be incorporated into the mandate for the study:

(a) Manmade environmental damage or hazard to the land, bodies of water or the air that directly or indirectly affect the right to life and the right to health, with special mention of ecological destruction and its relationship to genocide and/or ethnocide of forest indigenous peoples and others;

(b) The environment and self-determination, with an emphasis on removal and exportation of the natural resources from developing countries or indigenous peoples, especially if under a racist or <u>apartheid</u> régime, foreign or alien domination or in a trusteeship, fiduciary or affiliated relationship, in a way that degrades the environment, leaves the affected population with inadequate subsistence and increased poverty, and places the developing countries and peoples at a disadvantage in attempts to remedy the ecological destruction;

(c) The environment and all other human rights, especially economic, social and cultural rights;

(d) Destruction or replacement of plant and animal life necessary to maintain sufficient biological diversity to assure optimum food production, health, nutrition, and ultimately survival of people;

(e) Inaccurate or inadequate information regarding hazardous substances of all types, including biogenetic and other medicines; ecological consequences of proposed or ongoing development plans, including those affecting global weather, plant or animal life; or any other situation related to environmental degradation;

(f) Grave destruction of the environment in time of armed conflict.

6. The study should include proposals for improving the situation of human rights and the environment. The rapporteur should be asked to prepare, if feasible, a set of principles of human rights and the environment for adoption by United Nations bodies, with due concern for enforcement of standards in domestic and international forums.

7. The study should analyse and make recommendations regarding human rights and the environment from all sources of environmental human rights, including, inter alia, the protection of the environment found in international humanitarian law (see Geneva Conventions); the protection of humankind's property interests in the sea, the air, and other aspects of law of the common heritage of humankind (see the Convention on the Law of the Sea, the Charter of the Economic Rights and Duties of States (General Assembly resolution 3281 of 12 December 1974), and the Convention on the Protection of the World's Cultural and Natural Heritage; the basic environmental instruments such as inter alia, the World Charter for Nature (General Assembly resolution 37/7 of 28 October 1982); and the protection of workers as set out, inter alia, in instruments of the International Labour Organisation.

8. The study should include considerations of and recommendations regarding activities of bilateral or multinational, intergovernmental entities (such as the International Bank for Reconstruction and Development [the World Bank], the European Economic Community and others), private entities, as well as the United Nations Environmental Programme and other specialized agencies as their activities and mandate relate to human rights and the environment.

9. Article 28 of the Universal Declaration of Human Rights provides: "[e]veryone is entitled to a social and international order in which the rights and freedoms set out in this Declaration can be fully realized." Clearly, the world's peoples cannot enjoy the rights and freedoms of the Declaration unless the international community addresses violations of human rights related to the environment. For this reason, the non-governmental organizations indicated above most strongly urge the Sub-Commission to continue its concern for human rights and the environment by appointing Ms. Ksentini as special rapporteur.

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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written statement submitted by the Inuit Circumpolar Conference and the International Organization of Indigenous Resource Development, non-governmental organizations in consultative status (category II) and the Grand Council of the Crees (Quebec), a non-governmental organization on the Roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 August 1990]

1. The draft universal declaration on the rights of indigenous peoples is predicated on the need to obtain effective international protection for the rights of indigenous peoples.

2. In order to assist in the consideration and analysis of proposed texts, and particularly to facilitate the evaluation of their practical effectiveness to prevent rights abuses against indigenous peoples, and to ameliorate the conditions of indigenous peoples, we propose the following comments which are intended to serve as a conceptual framework to test the adequacy of specific language which may be put forward during the drafting and revision process during the next few years.

3. General style of drafting: Each article of the draft declaration should be composed of full sentences and not simply phrases. For example, the Universal Declaration on Human Rights uses complete sentences.

4. Collective and individual rights: The central importance of collective rights of indigenous peoples should be emphasized. Unless the meaning of a provision dictates otherwise, all of the rights in the draft declaration should be understood to include both collective and individual dimensions.

5. Rights of indigenous peoples and duties of States: Indigenous rights in the draft declaration should be reinforced by specifying the corresponding duties or obligations of States. This practice of specifying duties is recommended in the guidelines contained in United Nations General Assembly resolution 41/120 of 4 December 1986, entitled "Setting international standards in the field of human rights".

6. No unilateral State action: In any matter that may directly affect indigenous peoples, it is important to ensure that actions by States are not undertaken unilaterally. In regard to State obligations or duties, it should be indicated in the draft declaration that such duties be carried out "in agreement" or in "collaboration" with indigenous peoples.

7. Right to Self-determination: Explicit recognition of the right to self-determination should serve to ensure the broadest possible capacity for indigenous peoples to control their own affairs. There should be no discriminatory provisions with regard to the recognition of this right.

8. Consent of indigenous peoples: When development or any other actions are undertaken by States or other third parties, it is essential that these actions be subjected to indigenous "consent". Past experiences have shown that mere "consultation" is not a sufficient protection.

9. Indigenous participation at national and international levels: In order to positively influence the policy and decision-making of States, it is important that indigenous peoples have the right to participate in relevant forums and processes affecting them at the national and international levels. Indigenous issues, such as human rights, environment, and development, are increasingly being addressed at the international level. Therefore, indigenous involvement within a State is simply no longer adequate.

10. Processes to resolve disputes and complaint mechanisms: In order to resolve disputes or conflicts between States and indigenous peoples on a wide range of matters, it is important to ensure that effective and fair processes for the peaceful resolution of such disputes exist. In addition, there must be established appropriate mechanisms to review complaints about human rights violations and other matters, in the event that existing disputes are not able to be resolved.

11. Territorial, land and resource rights: In order to enhance the security of present and future generations of indigenous peoples, it is essential to attain adequate legal recognition for indigenous territorial, land and resource rights. The notion of "territorial" rights or rights to "territories" is used to connote rights over a traditional territory as a whole. It would include the whole environment (e.g. air space, subsoil resources, etc.) and not merely the land itself.

12. Control over development: Indigenous peoples must be recognized as having powers to control development in or affecting their traditional territories. Too often, the current practice of States is to unilaterally impose development projects on indigenous peoples (e.g. James Bay hydroelectric project). Participation of indigenous peoples in all stages of development projects, as well as in the benefits of these projects, must be ensured. In addition, the "right to development" of indigenous peoples must be recognized in a comprehensive manner that includes economic, social, cultural and political dimensions.

13. Environmental protection: The integrity of the environment in or affecting indigenous territories must be safeguarded. Provisions in this regard should include the right to a safe and healthy environment, to full participation in environmental and social impact assessment procedures, and to obtain compensation for environmental damage.

14. Cultural development: Indigenous languages and cultures must be protected in all their aspects and their further development must be facilitated.

15. Economic development: The traditional and other economies of indigenous peoples must be recognized and protected. Provisions are also required to enhance economic development in indigenous territories.

16. Treaty rights and treaty-making: Principal aspects of treaties and treaty-making should be elaborated in the draft declaration. The relevant duties of States should include the following: to respect treaties and guarantee their inviolability; to engage in a treaty-making process for fundamental matters (e.g. self-government); to establish mechanisms to resolve problems in existing treaties; to recognize treaties according to international law principles; to ensure the significance of treaties in national legal systems; and to interpret treaties in accordance with their spirit and intent.

17. General duty of States to provide resources: Without financial resources, many of the rights in the draft declaration would be exceedingly difficult to realize. Therefore, it is important to include a general provision that requires States to provide to indigenous peoples opportunities and resources for the full development of their own institutions and initiatives and for the full enjoyment of the human rights and fundamental freedoms referred to in the draft declaration.

18. Conclusion: The above listing of principal concepts and issues provides a brief outline of some of the concerns of indigenous peoples that should be accommodated in the draft declaration. A practical test of the effectiveness of any proposed draft universal declaration would be to determine whether its provisions would adequately address the wide range of issues facing indigenous peoples both now and in the future. It is important to recognize that the existing national laws of States have not adequately protected the rights of indigenous peoples, and that new international standards which encourage States to raise the level of protection at the national level are required.

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Agenda item 17 (a)

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS
AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS

PREVENTION OF DISCRIMINATION AND PROTECTION
OF CHILDREN: HUMAN RIGHTS AND YOUTH

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[.. July 1990]

GE.90-17099/4583a

1. At its forty-second session, the Sub-Commission is to study Mr. D. Mazilu's report on human rights and youth.

2. The International Federaiton of Human Rights (IFHR) would like to draw attention to the fact that extremely serious violations of the rights of the child are still occurring in countries which, nevertheless, have legislation supposedly intended specifically to protect children.

3. Guatemala exemplifies this type of situation.

THE RIGHTS OF CHILDREN IN GUATEMALA

4. Guatemala is a country with a young population. Of its total population of over 9 million, 56.4 per cent are under the age of 20 and there are more than 1.6 million children under the age of 5.

5. In the present situation, the prospect of a decent life for all these children is very far removed from the ideals proclaimed in international legal instruments, from the 1959 Declaration of the Rights of the Child to last year's Convention; furthermore, the situation is very different from that envisaged in some of the provisions of Guatemala's own legislation relating to the protection and guarantees of such rights (inter alia, Constitution, arts. 51, 54, 71 and 101).

6. In a country like Guatemala, where access to the most basic rights is prohibited by discriminatory and repressive government policies, children - and particularly indigenous children - are deprived of their rights and of the minimum conditions for gradual and necessary physical and mental development.

7. The poverty and deprivation in which the majority of children live have an effect on a gamut of special needs with regard to nutrition, education, health care, social welfare, etc. Their physical and intellectual growth is seriously harmed by an inadequate diet; they are more vulnerable to illness, particularly infections, and more likely to die or be disabled as a result of illness.

8. Given the brevity of this statement, we will mention only some of the elements that highlight the situation of Guatemalan children with regard to their most basic human rights.

A. Health problems

9. Thirty-six per cent of all deaths in Guatemala involve children less than one year old; more than a third of children between 30 and 35 months (34.6 per cent) suffer from second-degree malnutrition; 76 per cent of children between six months and five years have not achieved normal physical development, according to the Gómez scale (weight for age); every hour, four children between the ages of six months and five years die - one in eight of these could have been saved simply by vaccination.

10. According to the World Health Organization (WHO), the infant mortality rate for Guatemala is 65 per 1,000 live births; for children under five years of age it is 109 per 1,000. Eighty-two per cent of children under five suffer from malnutrition and, in the case of 74 per cent of these children the malnutrition is in the form of a protein deficiency.

11. In general, the health conditions of the majority of Guatemalan children can only be said to be truly appalling.

B. Education

12. Guatemala continues to have an outdated and defective education system which serves only a minority of the country's children.

13. According to statements made to El Grafico newspaper on 4 January 1987 by Mr. Eduardo Meyer, the then Minister of Education, 2.3 million children of school age did not go to school; of children attending school, 75 per cent did so without having eaten beforehand; 80 per cent of parents could not afford to buy school equipment because they lived in conditions of poverty or extreme poverty, as is the case with more than 70 per cent of the population.

14. The average period of school enrolment in Guatemala is 1.7 years of primary education, which is less than in the majority of Latin American countries, where the average is 5 years.

15. More than half of the 2 million children of primary-school age do not attend school. Of the 120,000 who enrolled in the first grade of primary school in 1982, only 30 per cent completed the sixth grade in 1987; in rural areas only 17 per cent did so.

C. Child labour

16. Because of the conditions of extreme poverty suffered by a large proportion of the Guatemalan population, children are obliged to work and are in fact badly exploited, particularly in work involving agricultural exports. A very high but undetermined percentage work as domestic servants, day labourers, assistant bricklayers, bootblacks, street vendors and in other occupations.

17. Every year, approximately 305,900 people, mostly from the Guatemalan high plateau, move to the south coast, mainly to work on the coffee, sugar cane, cardamom and cotton plantations. Of these, between roughly 27.1 per cent and 31.7 per cent are children, who are subjected to the same working conditions as their parents, with inadequate housing and food, dangerous exposure to heat, the risks of poisoning (particularly from fumigation) and diseases such as malaria.

18. For their part, agricultural exporters constantly make use of child labour, since their output is the same as that of adults, but they are paid a lower wage and, in many cases, their work is covered by their parents' wages.

19. Although children between the ages of 12 and 14 do the same work as adults, they are paid only half as much as their parents and the only food they are given is six tortillas and a spoonful of beans twice a day. The working day begins at 7 a.m. and ends at 4 p.m.

20. The State of Guatemala is responsible for the miserable existence of thousands of children who, from very early on in their lives, have to endure the same harsh working conditions as their parents, instead of spending their time on activities which would promote their all-round development. However, the country is being provided with United Nations advisory services, whose priority should be to rectify this type of situation.

D. Children who have been direct victims of repression

21. In addition to the above, it is also a fact that thousands of children have been and continue to be direct victims of the serious violations of human rights committed by the Guatemalan Government and army, particularly in rural areas.

22. Children have been murdered along with their parents; they have in many cases witnessed the abduction or extrajudicial execution of their parents; they have been forced, from the age of 15, to participate in military activities in the civil self-defence patrols. It is estimated that more than 60 per cent of all refugees are teenagers; the same figure applies with regard to the 700,000 or so people who have been forced to leave their communities and settle in the interior of Guatemala. According to information released by the Episcopal Conference of Guatemala, there are 150,000 orphaned children in the country who are not cared for by the State.

23. A disturbing revelation was made by Deputy Fermin Gómez, the representative of the Department of Totonicapán, who told Congress he had learnt that members of the army had raped Indian girls in the combat areas on the high plateau.

24. Below we give some examples of cases where children have been direct victims of violations of human rights in recent months.

10 October 1989: MARIA CHAVEZ, 36 years old, and her daughters CATALINA, 20 years old, and JUANA, 8 years old, were horrifically murdered by having their heads cut off after unidentified individuals had forced their way into their home in the village of Rio Blanco, Sacapulas, El Quiché. Two-year-old DOMINGO CHAVEZ was also seriously injured in this attack.

28 October 1989: Six-year-old ISAIAS SOLANO DE LA ROCA was abducted (and has not been seen since) while he was with the adult FREDY FIGUEROA, who was brutally murdered, in the village of Ticanlú, Tiquisate, Department of Escuintla.

26 December 1989: Adolfo Morales Hernandez, a member of the military police flying squad, shot an unidentified 11-year-old boy with a Galil rifle and left him with serious bullet wounds to his kneecap. This happened in the town of Escuintla, in the Department of Escuintla.

1 January 1990: Army troops belonging to the Marshal Zavala Brigade, stationed in the village of Los Cimientos, Chajul, Department of El Quiché, killed two-year-old SALVADOR MATEO and 15-year-old GASPAR CABA in the village of Putul, municipality of Chajul, El Quiché.

13 and 14 March 1990: In a scorched earth operation, the Guatemalan army destroyed 35 homes, tortured and murdered PEDRO GALLEGO DE LEON, and abducted his wife, two sons aged 2 and 6, and relatives in the villages of Pal, Tzialá and Chaxá, municipality of Chajul, El Quiché. In the same operation, ISABELA VELASQUEZ and her 3-year-old son FRANCISCO were also abducted.

15 March 1990: DONALDO MEJIA, aged 4, was taken into custody with nine indigenous adults by 12 heavily-armed men. The incident occurred when the group were travelling along the road from Tejutla to Malacatán in a pick-up truck and were stopped by a lorry (registration number C 14366) containing the armed men who took them away during the night to an unknown destination. The boy was later found alive with marks from blows to his body: he had possibly managed to jump from the lorry in which he was being transported.

20 April 1990: MARVIN INOCENTE ROJAS BAESA, aged 7, was seriously injured when unidentified persons threw a fragmentation grenade in his direction. The boy was with his father, Mr. José Faustino Rojas, who was killed instantly. The incident occurred on a plot belonging to the victim, a few kilometres from San Juan El Obispo in the Department of Sacatepéquez.

23 April 1990: WANDA SABINA JETTER MOLINA, aged 14, was shot and wounded when unidentified men fired at her for reasons unknown on the corner of Avenida Elena and Calle 16, district 3, Guatemala City.

Between 9 and 15 May of this year, soldiers in an army column from the village of Tzialá, El Quiché, took away to an unknown destination the girls: JUANA, aged 7, LUCIA, aged 3 and PETRONA, aged 7, all from the BERNAL family. The incident occurred in the village of Cabá, municipality of Chajul, El Quiché.

25. The IFHR urges the Sub-Commission to react to this type of situation, where the law is flouted and children - always the most vulnerable - are seriously abused.

26. Pending the establishment of the Committee on the Rights of the Child, and as a contribution to its future work, the Sub-Commission could, for example, suggest to those States affected by this problem, particularly Guatemala - which is in fact already benefiting from the United Nations advisory services - that they take "legislative, administrative and other measures" to ensure the effective enjoyment of human rights and fundamental freedoms (Commission on Human Rights resolution 1989/58).

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Forty-second session
Agenda item 8

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the American Association of Jurists, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 August 1990]

1. Economic, social and cultural rights and, in general, the right to development are enshrined in a large number of international standards that are binding upon all States, as well as upon other bodies subject to public and private law and upon individuals, either by virtue of their status as conventions or because they are included in solemn declarations that constitute part of the fundamental and sacrosanct principles recognized and accepted by the international community.

2. These principles are stated, inter alia, in the Charter of the United Nations (Arts. 55 and 56); in the Universal Declaration of Human Rights (arts. 22, 26 (2), 28 and 29); in article 1 (1) of the two International Covenants on Human Rights; in the International Covenant on Economic, Social and Cultural Rights; in the Proclamation of Teheran; in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S-VI)); in the Programme of Action on the Establishment of a

New International Economic Order (General Assembly resolution 3202 (S-VI)); in the Declaration on Social Progress and Development (General Assembly resolution 2542 (XXIV)); in the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX)); in the resolution adopted concerning development and international economic co-operation (General Assembly resolution 3362 (S-VII)); in the Declaration of Philadelphia, incorporated into the Constitution of ILO; in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of ILO in 1977; and in the Declaration on the Right to Development (General Assembly resolution 41/128).

3. The above norms are binding upon the following:

(a) The international community (Charter of the United Nations, Arts. 1 and 56 and a number of General Assembly declarations and resolutions cited above);

(b) International organizations, including the United Nations and its specialized agencies, such as, for example, the International Monetary Fund and the World Bank (Charter of the United Nations, Arts. 55, 56, 57, 58, 63 and 64). The International Court of Justice has ruled that the rights and duties of an entity such as the United Nations or one of its specialized agencies must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice (p. 180 of the 1949 ICJ Reports, cited in the report by the Secretary-General (E/CN.4/1334) of 2 January 1979). Accordingly, the American Association of Jurists considers that the Special Rapporteur on agenda item 8 should carefully examine whether the policies of the International Monetary Fund and of the World Bank are not contrary to the Charter and other normative instruments of the United Nations and even to the aims proclaimed in the constituent documents of those specialized agencies;

(c) International standards in respect of economic, social and cultural rights and the right to development are also binding upon States and in particular upon the industrialized countries and the former colonial powers by virtue of the principle of "remedying of injustices which have been brought about by force and which deprive a nation of the natural means necessary for its normal development" - chapter I, principle (i) of General Assembly resolution 3281 (XXIX);

(d) Lastly, the above standards are binding upon individuals and upon corporate bodies subject to private law, in accordance with articles 29 (1) and 30 of the Universal Declaration of Human Rights and with the preambles to the two International Covenants on Human Rights.

4. The above binding standards need to be complemented by (a) monitoring and control mechanisms; (b) evaluation procedures; and (c) sanctions should they be breached or not complied with.

5. Economic and Social Council resolutions 8 (XXIII), 728 F (XXVIII), 1235 (XLII) and 1503 (XLVIII) established monitoring and control mechanisms to ensure the observance of human rights as a whole: in practice, the mechanisms are employed in respect of civil and political rights, although they should also be employed for economic, social and cultural rights.

6. Special Rapporteurs could also constitute an effective means of monitoring and control over economic, social and cultural rights, as they already do in the case of civil and political rights.

7. The Committee is the specific monitoring and control mechanism for countries that are parties to the International Covenant on Economic, Social and Cultural Rights. It would undoubtedly be more effective if the Committee's general comment No. 1 were put into practice (Committee on Economic, Social and Cultural Rights, report on the third session (E/1989/22-E/C.12/1989/5)), together with the relevant sections of Economic and Social Council resolution 1988/4.

8. Non-governmental organizations can make an effective contribution to monitoring and control by making use of the mechanisms of Economic and Social Council resolutions 8 (XXIII), 728 F (XXVIII), 1235 (XLII) and 1503 (XLVIII) and by responding to the invitation made by the Economic and Social Council in paragraph 16 of its resolution 1988/4, to "submit to the Committee written statements that might contribute to full and universal recognition and realization of the rights set forth in the Covenant ...".

9. Evaluation procedures are characterized by a technical and statistical aspect that covers a variety of development concepts.

10. The American Association of Jurists shares the position of the South Commission that evaluation mechanisms should be established, implemented and modified with the participation of the persons concerned and on the basis of the objectives pursued. Such an approach would help to overcome the delays, shortcomings and distortions that affect the statistics habitually used, to surmount the inability of many countries to set up elaborate and costly evaluation machinery and rapidly to identify the prevailing trends so as to be able to effect in good time the necessary adjustments to the policies being implemented.

11. Social welfare indicators should be defined as a means of measuring genuine progress, i.e. an assessment of living conditions in non-monetary terms (e.g. conditions of health rather than expenditure on public health), at the local level, and measurements should be made on the basis of small geographical units (commune, village, etc.), by population categories. Social welfare indicators should comprise several categories of indicators such as, for example, the following: (a) income distribution by population sector; (b) childhood (mortality, morbidity, children at work, etc.); (c) education; (d) employment; (e) nutrition; (f) housing; (g) health; (h) means of communication; (i) social security; (j) environment; (k) grass-roots participation; (l) human rights and fundamental freedoms. This latter indicator was suggested by the experts who prepared the "Report on international definition and measurement of standards and levels of living" (United Nations, 1954, E/CN.3/179, E/CN.5/299).

12. The American Association of Jurists suggests that the Sub-Commission should adopt the above basic criteria for evaluation procedures, bearing in mind the studies already carried out within the United Nations, for example within UNRISD, and the document by the South Commission: "Towards a new way of measuring development" (August 1989).

13. Sanctions: the above international standards establish the right and the duty of States, of the international community, of other bodies subject to public and private law and of individuals to contribute to ensuring that all human beings are able to enjoy their fundamental collective and individual rights. In other words, there is both a right and a duty to promote progress towards the enjoyment of human rights and a duty to refrain from committing acts that prevent or hinder the enjoyment of such rights (Universal Declaration of Human Rights, art. 30).

14. Should any of those rights be violated or the corresponding obligations not complied with, it is appropriate to resort to the existing United Nations machinery in order that the States, bodies or individuals responsible may be condemned or punished. Such machinery should be enhanced and supplemented by the following:

(a) An optional protocol to the International Covenant on Economic, Social and Cultural Rights;

(b) A declaration condemning as offences against international law those policies and practices of States, institutions and individuals that constitute an obstacle to the fulfilment of economic, social and cultural rights - for example, usury, illegal currency trafficking, the deregulation of the international monetary system, serious environmental damage inflicted deliberately or caused by blatant errors or omissions, and, in general, the abuse of economic power to obtain by coercion disproportionate concessions, advantages or profits to the serious prejudice of third parties. The Sub-Commission should encourage States strictly to apply national legislation to punish, for example, embezzlement of public funds, negotiations incompatible with the exercise of public office, illicit gains by public officials, infringements of exchange regulations, etc., or to promulgate laws for that purpose should there be a legal vacuum.

15. The Sub-Commission should also encourage States to scrutinize the lawfulness of the contracts that gave rise to the external debt, as many of them are characterized by vices of consent or possess unlawful clauses (usurious rates of interest, waiver of the debtor's national jurisdiction in respect of the settlement of disputes, etc.).

16. The obligation of the State to punish those responsible for economic crimes, to declare null and void contracts made for unlawful purposes or characterized by vices of consent and to attempt to obtain redress for the damage derives from national law and is decided within domestic jurisdiction. However, if the economic damage arising out of such unlawful circumstances is of such a scale that it has serious repercussions on the population's standard of living, international standards regarding the right to development should come into play.

17. Accordingly, if domestic remedies have been exhausted or do not exist, or if the State has waived its power to punish or to afford redress, the matter should come within the competence of the relevant United Nations bodies to deal with what might be described as a "consistent pattern of gross and reliably attested violations of human rights".

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DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written statement submitted by Indian Law resource center, a non-governmental organization on the roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 August 1990]

The Yanomami of Brazil

1. The condition of the Yanomami of Brazil continues to be critical as thousands of gold miners, known as garimpeiros, maintain their illegal occupation of Yanomami lands, and the Yanomami, as a consequence, die in great numbers. At the last two sessions of the Working Group on Indigenous Populations and the most recent sessions of the Commission on Human Rights and the Sub-Commission, we reported on the genocidal situation that has resulted from the invasion of more than 45,000 garimpeiros, and the Government's refusal to remove the invaders and provide a level of medical care sufficient to cope with the diseases and health problems created by them. Underlying the entire tragedy, of course, is Brazil's total failure to demarcate properly the lands of the Yanomami.

2. Meanwhile, the destruction of the fragile Amazonian environment and the pollution of the area's rivers with mercury, oil and mud - the by-products of garimpeiro operations - have served to augment the countless Yanomami deaths, now estimated to exceed 15 per cent of the 9,000 Yanomami.

3. Rather than protect the traditional Yanomami territory, as recognized by Brazil's Constitution and various federal court orders, the Government, under the previous Sarney administration, demarcated the Yanomami lands as a group of 19 disconnected areas and illegally created two "reserves" for the garimpeiros that are within that territory.

4. A few months ago it appeared that Brazil, under newly-elected President Ferdinand Collor de Mello, was at last determined to respond to the situation created by the influx of the garimpeiros. Tragically, the hopes of that recent period now appear misplaced. Of the three measures long deemed indispensable, not one has actually been carried out. The garimpeiros have not been expelled from the indigenous territory, and President Collor has not annulled his predecessor's creation of the garimpeiro "reserves" in the Yanomami territory. There is no comprehensive medical plan in place, so the Yanomami mortality rate continues to mount. The Government has neither demarcated Yanomami territory as one contiguous unit nor taken steps to protect the area from invasion.

Failure to destroy clandestine airstrips

5. The Government's plan to dynamite the illegal garimpeiro airstrips, announced by President Collor in late March, has badly failed. Of more than 100 such strips, only 14 were dynamited before the programme was called off on account of the rainy season. Of these 14, at least nine are now back in operation. Moreover, the dynamiting of the strips will not resume until the end of the rains, usually in September.

Failure to remove miners

6. On 21 April 1990, the federal court which last year ordered the garimpeiros' removal issued a new order directing FUNAI, the government Indian agency, to carry out the court's removal order. Ignoring the prior administration's illegal declaration of garimpeiro "reserves" inside Yanomami territory, the court warned that failure to implement its mandate would subject FUNAI's head to contempt penalties. In addition, the Federal Prosecutor's office recently asked the Justice Department to use military force to control the garimpeiros in certain areas of the Yanomami territory. However, these developments come at a time when the Federal Police have reduced the number of agents involved in removal operations to a mere 14, and the political will to confront the garimpeiros seemes generally lacking.

7. Indeed, garimpeiro activity seems to have increased. Two federal prosecutors who travelled widely in Yanomami territory at the end of June encountered many indications that aggressive mining practices had resumed throughout the area. The prosecutors have stated, accordingly, that they expect a "substantial increase" of mining activities in September when the rains end. They have also reported on the continued health problems of the Yanomami and, in particular, that malaria, whooping cough and tuberculosis are now also affecting Yanomami in the Boa Vista area.

8. President Collor has promised energetic measures to expel the garimpeiros, but no action has yet been taken. Nor has his administration moved to annul the "reserves". In sum, the miners are still on indigenous lands in great numbers and the Government is doing little or nothing to remove them or to keep them out. So long as the "reserves" continue, it will be impossible to remove the miners permanently.

Grave health situation

9. Data gathered by the medical teams finally allowed by the Government to enter Yanomami territory early in 1990 underscore the lethal nature of the influx of the garimpeiros. Rates of malaria infection, for example, range from 74-91 per cent in villages close to centres of garimpeiro activity, in contrast to a 3 per cent rate in a relatively isolated community.

10. Moreover, to date, the development of adequate medical programmes to address the critical health needs of the Yanomami has been held hostage to the bureaucratic paralysis which has characterized much of the Government's response to the unfolding tragedy of the Yanomami. Thus, Health Minister Alceni Guerra at first approved a regional health plan, but the plan has now been abandoned. Government cutbacks on the transport of medical personnel and medicines into many indigenous areas have also been based on the onset of the rainy season. The net result of these difficulties is that the health situation remains very serious in the Yanomami area.

11. Still another cause for the failure of the medical programme to counter adequately the Yanomami's health problems is the lack of support, logistical and otherwise, for the medical teams that has been provided by FUNAI holdovers from the previous Sarney administration. In one documented report, when a FUNAI airplane recently broke down, the agency collaborated with garimpeiro leader Jose Machado who, in return for providing a substitute plane to ferry medical supplies, was allowed to fly in additional craft to resupply garimpeiros working illegally within Yanomami territory.

12. Although the lack of aircraft and other support has been the most serious problem, medical care is also sharply limited by the extreme scarcity of Yanomami interpreters to assist the medical personnel. Only a handful of such interpreters exist, and this makes it impossible to provide the level of medical care needed to counter the diseases and medical problems resulting from the invasion of the garimpeiros. As a result, complete removal of the garimpeiros is the only means of stopping the physical destruction of the Yanomami people.

Destruction of the environment

13. The invasion of the garimpeiros has brought the destruction of large areas along the banks of rivers where the mining operations are taking place. The headwaters of all the major rivers in the Yanomami area have been polluted with mercury, resulting in the destruction of much of the Yanomami food supply. In tests carried out last year in one group of Yanomami, researchers found that two-thirds of those tested had mercury levels in their bodies above the level established as acceptable by the World Health Organization. These results tend to confirm that there is now a high level of mercury poisoning among the Yanomami.

14. Environment Secretary Jose Lutzenberger requested last month that President Collor revoke the decree that created the garimpeiro "reserves", yet no steps have been taken. Likewise, the Environment Secretariat has taken no action to restore or repair the areas that have been destroyed by the mining activities.

Recommendations

15. In a recent report, the distinguished Brazilian organization, Açao pela Cidadania (Citizen Action), has recommended that the new Brazilian Government adopt the following measures:

(a) The expulsion of the garimpeiros from the lands traditionally occupied by the Yanomami and a rigid control of the area to prevent new invasions;

(b) Planning and implementation of projects for environmental restoration of the Yanomami areas destroyed by the mining, and permament health assistance for the Yanomami with the participation of civil and other interested organizations;

(c) Interdiction of the clandestine airstrips;

(d) The revocation of the governmental decrees which created garimpeiro "reserves" and national forests within the Yanomami territory;

(e) The demarcation of the total contiguous area traditionally occupied by the Yanomami, in accordance with the first paragraph of article 231 of the Constitution.

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Forty-second session
Item 10 (a) of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(a) QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT

Written communication submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[9 August 1990]

1. The International Federation of Human Rights has noted with great satisfaction the progress of the Sub-Commission's work on the administration of justice and the human rights of detainees.

2. However, the persistence and urgency of a number of extremely grave human rights violations in this field cannot fail to prompt a response from the Sub-Commission.

3. One example is the situation in Colombia, which has seen a resurgence of the "dirty war", the army's involvement in human rights violations, and the impunity of paramilitary groups.

4. The International Federation of Human Rights (IFHR) wishes to remind the Sub-Commission that, in 1989, a total of 3,200 persons were listed as victims of political violence, including 2,479 political murders and 114 disappearances, in Colombia.

5. At the beginning of 1990, unfortunately, the same situation, or an even worse one, exists, since IFHR has recorded some 200 political murders, and 53 disappearances, during the first quarter; 14 massacres (simultaneous murders of 5 persons or more) occurred between January and March 1990.

6. IFHR has noted that the targets of these attacks are chiefly militants of left-wing political organizations, since 79 members of the Patriotic Union were assassinated during the first quarter.

7. The Urabá region was most affected by this wave of assassinations, before and after the legislative and municipal elections of 11 March 1990.

8. By way of example, at Apartado on 26 February 1990, Mrs. Diana Cardona Saldarriaga, the mayor of the town, was assassinated by killers posing as bodyguards of the Administrative Security Department (DAS). Subsequently, on 19 March in the same town, six militants of the Patriotic Union were murdered in a cafeteria. On 27 March an attack was made on the Judiciary Police Commission investigating the massacre. At Chigorodo, a small town situated 30 km from Apartado, five members of the Patriotic Union and the Popular Front were abducted and then murdered on 28 March.

9. In other regions, the abduction and subsequent murder of rural trade unionists of the ATCC (Association of Peasant Workers of the Carare) and of a journalist, Silvia Margarita Duzan, who was murdered on 26 February 1990 by MAS, a paramilitary group of the extreme right have been reported. The Workers' Trade Union of Santander has denounced the murder of six members of the Union of the Indupalma enterprise since the beginning of the year.

10. IFHR also possesses a great deal of data which point to some complicity on the part of military or police personnel with paramilitary groups, including those controlled by Fidel Castaro, the successor to Gonzalo Rodriguez Gacha, who was killed on 15 December 1989. For example, at Urabá when 43 peasant sympathizers of the Popular Front were abducted on 14 January 1990, it was noted by the Colombian Human Rights Commission that the paramilitary group commanded by Fidel Castaro was obliged to pass through a military checkpoint installed on the only communication road leading to Puerto Bello, but that it was not caused the slightest inconvenience. The bodies of some of these peasants were to be found later buried on land belonging to Fidel Castaro.

11. It was also noted that on 19 March 1990, when six militants of the Patriotic Union were murdered at Apartado, as stated above, the massacre took place 60 metres from a police station and 300 metres from a military checkpoint but neither the army nor the police intervened. Moreover, the patrols covering the entire town had been ended an hour and a half before the attack.

12. A few weeks after the establishment of the military régime by President Barco in the Urabá region on 15 April 1988, various investigations established that a number of massacres had been carried out by certain elements of the Colombian army allied to drug traffickers - for example, the massacre at the Honduras and La Negra estates, where 30 agricultural workers had been murdered, on 4 March 1988.

13. The magistrate in charge of the investigation indicted several leaders of the Medellín Cartel, and also Lieutenant Pedro Bermudez of the light infantry battalion, but the latter was never detained. Shortly afterwards, the examining magistrate's father was killed as well as the magistrate newly assigned to the case.

14. Thus, since the region's militarization, IFHR has noted that paramilitary groups have stepped up their activity and that the effect of the militarization has been to aggravate the repression and prohibition of any political activity. The paramilitary groups controlled by Fidel Castaro seem able to move about with complete impunity in Urabá, in the regions of the Chocos and in the provinces of Sucre and Córdoba.

15. IFHR has also noted actions which reveal the implication of military or police personnel entrusted with the protection of towns or individuals in human rights violations. Indeed, the massacres or murders perpetrated by paramilitary groups often occur when these military or police personnel lift their road blocks or replace their escorts. The murder of Diana Cardona Saldarriaga, the mayor of Apartado, occurred when her DAS bodyguards were relieved, shortly before the arrival of the fresh escort. Moreover, Bernardo Jamarillo was killed in the middle of Bogotá international airport by a young man who had been able to enter unhindered with his weapon despite the numerous checks planned for that day. At the time he was not wearing a bullet-proof vest, contrary to his custom, and the internal television scanner was not on. The Communist youth leader José Antequerra and the Liberal Party's preliminary presidential candidate Ernesto Samper had been assassinated one year earlier, in identical circumstances.

16. Lastly, IFHR wishes to recall that no action whatsoever has yet been taken in regard to the complaints lodged against General Bedova, the former Commandant of the Meta region, in whose administrative area 300 militants of the Patriotic Union were assassinated.

17. Although IFHR welcomed the first measures taken by the Barco Government against the paramilitary groups in May 1989, it can only note, one year later, that those measures have been utterly ineffective.

18. In view of situations of such gravity, IFHR cannot but appeal to the Sub-Commission to respond and to take into consideration the full importance of this agenda item.

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
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Forty-second session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International Federation for Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[9 August 1990]

1. By becoming a member of the United Nations Organization, and adhering to its Charter, the Government of the Socialist Republic of Viet Nam (SRVN) recognizes the equal and inalienable rights of all men and women, and pledges itself to observe and respect human rights and fundamental freedoms.

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2. Furthermore, the accession of the SRVN to the United Nations International Covenant on Civil and Political Rights renders Viet Nam accountable to the United Nations for protecting the human rights of its citizens, rights which include the guarantee that no one is subjected to arbitrary arrest and detention, and that the right to freedom of thought, conscience, religion and expression is to be protected.

3. The 1980 Constitution of the SRVN embodies many of these basic rights, notably the right to freedom of conscience and religion (article 68) and the right to freedom of opinion, freedom of the press and freedom of association (article 67). However, the International Federation for Human Rights (IFHR) and its affiliate, the Viet Nam Committee on Human Rights, are concerned that the Constitution also contains articles which severely restrict these freedoms, prohibit the free expression and circulation of independent political opinions or religious beliefs, and subordinate individual rights and liberties to the interests of the State too severely in reference to international law.

4. Articles 2 and 4 of the 1980 Constitution affirm that Viet Nam is a "state of proletarian dictatorship" committed to "the building of socialism", in which "the Vietnamese Communist Party (...) is the unique force leading the state and society". Article 67, which guarantees the basic freedoms of speech, assembly and the press, states that "no one may misuse democratic freedoms to violate the interests of the state and people", and article 13 states that "all acts (...) detrimental to the socialist revolution and the building of socialism will be severely punished".

5. Actions perceived to threaten State security are punishable by extremely heavy prison sentences, and by the death penalty in certain cases under the 1986 SRVN Criminal Code. "Actions that disrupt public security" (article 83), "causing divisions between the religious and non-religious and separating religious followers from the people's government and social organizations" (article 81), and "the spreading of propaganda against the socialist régimes" (article 82) are all categorized as "especially dangerous crimes against national security". THE IFHR and the Viet Nam Committee are concerned that many people sentenced on charges of infringing national security are in fact prisoners of conscience detained solely on account of their non-violent political views or religious activities.

6. The IFHR and the Viet Nam Committee are particularly concerned by the role played by the military in the enforcement of party policies and the arrest of suspected opponents of the régime. Reports in the Vietnamese official press over the past year indicate the deployment of the armed forces all over the country to assist the police in mass arrest operations, and the use of fire-arms and brutality by the military to repress peaceful demonstrations organized by peasants and students in the provinces.

7. Recently, the army was mobilized to join police and security forces in a wave of arrests launched in December 1989 to implement "Directive 135". This Directive (chi chi) issued by the Council of Ministers calls for a clamp down on "all violations of national security" and the maintenance of a "firm control over national security and political stability". Five operations were launched over a period of six months, during which 26,747 people were "arrested and punished", of whom 2,151 were sentenced to hard labour and six

were condemned to death. Although the crimes were generally described as "economic" by the official press, the IFHR and the Viet Nam Committee are informed that a large number are human rights campaigners, religious dignitaries and suspected Government critics who were arrested solely on account of their non-violent political views or religious beliefs. The Hanoi weekly "Dai Doan Ket" (No. 1, 2-8 January 1990), reported that an important proportion of the 8,600 arrested during the first operation in December were tried for "spreading illicit, counter-revolutionary culture".

8. In May, a further 6,000 people were arrested and sent to re-education camps, and a number of prominent religious dignitaries and non-violent opposition leaders were sent to prison or detained under house arrest. Nguyen Ho and Ta Ba Tong, former Chairman and Vice-Chairman of the "Club of Former Resistance Fighters", an organization of top-level South Vietnamese former military heroes and revolutionaries calling for wider political reform, were placed under house arrest in Ho Chi Minh City, as was former student leader Huynh Tan Mam and Le Quang Vinh. The IFHR and the Viet Nam Committee have reason to believe that these people were arrested because of their criticisms of party policies.

9. Catholic priest Father Chan Tin and Catholic intellectual Nguyen Ngoc Lan were also placed under house arrest on 16 May 1990, reportedly on charges of "carrying out activities aimed at opposing socialism and sowing dissension among religions". Father Chan Tin was accused of preaching anti-government sermons aimed at "inciting Catholics to demand human and civil rights". Official sources say he is now under house arrest in the Redemptorist Church, Duyen Hai district (not his own home), although Catholic sources suggest there may be no Church in this district. Nguyen Ngoc Lan is detained at his home.

10. The IFHR and the Viet Nam Committee are deeply concerned about the prolonged detention in re-education camps of alleged government opponents and people associated with the former Government of the Republic of (South) Vietnam since 1975, and also by the large numbers of prisoners of conscience i.e. Buddhist dignitaries, Catholics, Hoa Hao, Cao Dai, Protestants, writers, journalists, artists and intellectuals who are detained in re-education camps on account of their non-violent beliefs or opinions. Many dignitaries of the Unified Buddhist Church (An Quang Pagoda), which was outlawed by the Government in 1977, are detained in re-education camps or under house arrest. Thich Huyen Quang, who was first arrested in 1977, is still under house arrest in his native village where he was banished in 1982. He has never been sentenced or given the reasons for his arrest. Buddhist monks and scholars Thich Tue Sy (detained in Camp A.20, Tuy Hoa) and Le Manh That (Xuan Loc Camp), are serving sentences of 20 years hard labour on charges of "human rights activities". Thich Duc Nhuan, who is in very poor health, is serving 10 years in Camp Z.30 D, Ham Tan, along with Thich Tam Can and four other Buddhist monks. Writer Doan Quoc Sy is serving a nine-year sentence in Xuan Loc Camp, and Thao Truong is in Camp Z.30 D, Ham Tan. The IFHR and the Viet Nam Committee are also concerned about the detention of Catholic priest Father Tran Dinh Thu, 83 years old, who was sentenced to life imprisonment in 1987, and that of the poet Nguyen Chi Thien who has served almost 30 years imprisonment for his protests against the restrictions of freedom of expression.

11. With the campaign for "renovation" (đổi moi) launched by the Vietnamese Communist Party (VCP) at its 6th Congress in 1986, a certain degree of criticism was tolerated in the press, and journalists and writers were given wider scope to express their views. However, since 1988, the Government of the SRVN has taken a number of measures to curb this campaign. Fourteen magazines and newspapers have recently been closed down and the editors of six prominent publications have been sacked, one of whom was Nguyen Ngoc, editor of "Van Nghe", the official publication of the Vietnamese Writers Union. Two long-standing political parties, the Vietnamese Socialist Party and the Vietnamese Democrat Party were disbanded, and their newspapers closed down. A new Press Law adopted in December 1989 imposed further restrictions on the media, obliging newspapers to submit copies prior to distribution, requiring journalists to reveal their sources whenever found "necessary" by the State, and providing in general for "the state management of the media" (Chapter 5, Law on the Media).

12. Many journalists who participated in the criticism campaign have been harassed or subject to physical violence by the Security Police. Ha Van Thuy, who wrote in "Van Nghe" on press censorship, has been forced into hiding after repeated threats on his life. Novelist Duong Thu Huong, who has repeatedly criticised the party's control over literary creation, has been interrogated several times by the police. Manuscripts of her speeches and interviews can only be circulated clandestinely. On 16 November 1989, Phan Dac Lu was arrested for possessing a photocopy of one of her recent interviews.

13. The International Federation for Human Rights and the Viet Nam Committee on Human Rights welcomed the decision of the Socialist Republic of Viet Nam to present its initial report to the Commission on Human Rights a few weeks ago. Nevertheless, the IFHR and the Viet Nam Committee are concerned by the constant and systematic violations of human rights in this country, and strongly call upon the Sub-Commission to examine the human rights situation in the Socialist Republic of Viet Nam during its Forty-second Session.

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Agenda items 6 and 15

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written statement submitted by the International League for the Rights and Liberation of Peoples, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[9 August 1990]

1. The International League for the Rights and Liberation of Peoples is concerned about the threatened survival of the Batwa in Burundi.

2. Only a few hundred years ago, the central African highlands between the Congo river and Lake Nyanza (Lake Victoria) were covered with dense rainforests in the lower altitudes. This was the habitat of a small-statured nomadic people, the Pygmies. They lived in harmony with their environment and respected it.

3. Thereupon, the Bantu, a people practising slash and burn agriculture, invaded the area from the west and began step by step to destroy the forest and, consequently its inhabitants. The extensively deforested areas became attractive to the tall cattle-raising nomads migrating from the upper Nile valley. They soon dominated the agriculturist Bantu despite their small number. The peaceful small aborigines - Pygmies and Pygmoids - were of no significance within the fights for power unknown to them. In addition, they were already so decimated in number as to be totally unimportant.

4. A next wave of intruders came from further away, from Europe. German and English colonialists invaded from the east, Belgians from the west. The central highlands were divided arbitrarily. After some more wrangling for power and rights the Burundi nation was born.

5. The four mentioned ethnic groups had a decisive influence in shaping the modern human history in the region which is today called Burundi. The pygmoid aborigines, the Batwa, reduced in numbers to insignificance have partly and forcibly been mixed with the second ethnic group, the still mainly agriculturist Bantu peoples, called Hutu. The group they comprise is now dominated by rulers belonging almost exclusively to the third ethnic group, the nilotic peoples, called Tutsi. The latter are advised by the fourth ethnic group, the Europeans, formerly the colonial rulers. The Europeans assist the Government by supply of arms as well as by protection and management of the foreign trade, the main source of income.

6. Decimation reduced the pygmoid Batwa to a few thousand in number. There are no exact figures. The Batwa are approximately as numerous as Europeans in Burundi, but they enjoy, as a whole, far less rights and opportunities than them. Even more than the Hutu, who represent some 85 per cent of the inhabitants, the Batwa are completely banned from any political participation or self-determination.

7. For decades the war between Hutu and Tutsi has been carried out under strong influence of the Europeans in conformity with their interests. Although there is international awareness of this war, it is often wrongly misinterpreted as a negative example of tribalism, no account being taken of conditions set by the Europeans.

8. However, practically nobody shows any concern for the almost completed extinction of the peaceful Batwa. This extinction is nowadays perfected by all - Tutsi, Europeans and Hutu - through destruction of the last means of the Batwa's livelihood, the forest. Unlike peoples in other conflict areas, for instance Lithuania or Israel, the Batwa and other peaceful small peoples are not granted a historical right of domicile and self-determination. The Batwa are within the territory of Burundi, the only people threatened with extinction. Nobody seems to care, nor to take any effective steps against this threat. Paradoxically the heavy decimation of the Batwa, and their complete political unimportance, leads human rights advocates all around the world to care for the suppressed Hutu rather than for the few remaining Batwa.

9. For the foregoing reasons, the International League for the Rights and Liberation of Peoples urgently requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to undertake the following actions:

(a) To contact directly the last Batwa groups in Burundi;

(b) To invite Batwa representatives to the sessions of the United Nations Working Group on Indigenous Populations;

(c) To lend unreservedly United Nations aid for the creation of one or more autonomous Batwa territories, which would be economically used only by them and where they could live a traditional life or a life of their choice, according to their own decisions.

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Agenda item 15

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written communication submitted by the International Federation Terre des Hommes, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 August 1990]

1. Following the receipt of information from one of its members who has been working in the field in co-operation with the Native Missionary Council (CIMI), a partner organization, the International Federation Terre des Hommes is extremely concerned at the native policy of the Government of Brazil, which is committing many violations of the fundamental rights of indigenous peoples. Over the last five years, this policy has led to increasingly direct intervention by the military authorities: the National Security Council (CSN), the National Defence Force (SADEN) and more recently the Secretariat for Strategic Matters.

2. The military's main aim is to reduce substantially the area of traditional Indian lands by dividing them into lots and converting them into "native settlements". The aim is in fact to dispossess Indians of their land, enabling non-Indians to occupy it and so hastening the process of assimilating the Indians into the national society. Furthermore, various measures have been taken by federal agencies to harass the leaders and seriously weaken indigenous organization.

The Yanomamis

3. The indigenous groups still living in remote areas, like the Yanomamis, who live in the heart of the Amazon forest, are directly hurt by the Brazilian Government's policy. They have no means of asserting their rights or pressing their claims. More than 40 small groups of Indians in remote areas are thus threatened by violent encounters with settlers and developers as they seek to make inroads on various fronts. Moreover, President Collor's new Government has refused to repeal the various decrees which have divided up Yanomami territory and endorsed the arrival of thousands of gold prospectors, who do incalculable harm to the Yanomamis and their environment.

4. As a result, the plight of this people, the largest native group in Latin America still living in isolation, has not improved, despite the many appeals that have been made to various international bodies.

The Guaja people

5. This people, which has taken the name Awa and speaks the Tupi-Guarani language, is the last surviving nomadic non-farming people in Brazil. The Guajas live in the uppermost forests round the Pindaré, Caru, Tariaçu and Gurupi rivers in the state of Maranhao. The population of the Guajas is estimated at some 300 persons still living in isolation in the forest, in small groups of less than 20.

6. The National Indian Foundation (FUNAI) made contact with two Guaja groups as early as 1973 and 1980. These groups are now settled around the Guaja Indian post in the southern part of the Upper Tariaçu Indian territory and around the indigenous Awa post in the Caru indigenous territory of the Gajajara Indians. The remainder of the Guajas live in isolation in the forest, and are constantly fleeing from settlers.

7. The Guajas are an ethnic group which lives by hunting, fishing and food-gathering. This means that they are always on the move in their traditional territory. This type of socio-cultural organization based on a nomadic lifestyle is extremely vulnerable to large-scale occupation by settlers and to the implementation of huge development projects. This people, therefore, has little chance of survival and measures should be adopted urgently to preserve and safeguard the inviolability of Guaja territory. The Guajas are one of the last group of human beings who, because of their nomadic existence, have extensive knowledge of the pre-Amazonian forest and its wealth.

8. In 1987, FUNAI and the Brazilian Forest Protection Institute (IBDF) proposed that two permanent territories should be created:

(a) The Awa Indian territory, which constitutes a corridor between the Caru and Upper Turiaçu territories, where the Guaja Indians are found;

(b) The Gurupi biological reservation, under IBDF jurisdiction, which has an area of 341,650 hectares and was established to preserve the ecosystem of the Awa territory and to create a protective zone.

9. This proposal was ratified on 3 May 1988 by inter-ministerial decree No.76 of the Ministries of the Interior, Reform and Agrarian Development, which defines the Indian territory as an area of 147,000 hectares permanently owned by the Guaja Indians. The ratification followed a lengthy series of studies which confirmed that the Guajas had lived in this region at least since the last century. Barely four months later, however, on 8 September 1988, the three ministries promulgated another inter-ministerial decree No. 158, which reduced the Guaja territory by 82,000 hectares without offering any justification whatsoever.

10. This move reflects the aims of a great many forestry companies which advocate the development of Indian lands in the Gurupi and Turiaçu river valleys. Furthermore, this decree is a violation of article 231 of the Federal Constitution, which acknowledges the Indian peoples' inalienable and imprescriptible right to the lands which they have traditionally occupied.

11. This measure stems from the suggestions of a working party headed by FUNAI, which has been obstructing the longstanding efforts of anthropologists and supporters of indigenous peoples to obtain the demarcation of Guaja territory within the boundaries set by the ministerial decree of 3 May 1988. Moreover, everything indicates that this reduction was planned with the intention of creating "native settlements" where, unlike the Indian territories, non-Indians are authorized to enter and remain on the lands, thus enabling speedy assimilation of the Indians into the national society.

12. This decree has only served to intensify the aggressive penetration of Indian territory by settlers. Thousands of them have settled and hundreds of large estates (of 1,500 to 4,000 hectares each) have been established on Guaja lands. Companies from Açailândia have swarmed over the southern part of the reservation to extract wood and produce charcoal (used in the Tocantins iron works) and the large estates from Paragominas municipality have extended their properties and pushed their oxen up to the Maranhao bank of the Gurupi River.

13. Large companies have made considerable inroads into the Awa-Gurupi native territory. Some of them, including VARIG, SOCIC, AGROMASA and DOCEGED (a subsidiary of the Vale do Rio Doce company), are claiming that they have gained control of huge territories ranging from 40,000 to 50,000 hectares inside the Indian territory and the surrounding biological reservation.

14. There has also been direct intrusion into the territory by the railway of the Great Carajas project, which crosses part of the reservation, and by the projects to establish iron and steel works and factories making charcoal to fuel the blast furnaces. All of these projects will entail the destruction of 25 million cubic metres of forest per year, or the deforestation of nearly 80,000 hectares of land.

15. The deforestation rate observed in 1989 was 15 per cent higher than that of the previous year (this information has been confirmed by technicians of the Guaja Indians Protection Scheme, based in Santa Inès) and all of this has taken place without the slightest move by the federal agencies to stop it. If deforestation continues at this rate, it will mean desertification of the forest in a very short time and the death and extinction of thousands of species of tropical flora and fauna.

16. This situation shows that the Government is in no hurry to solve the problem of the invasion of Guaja territory, despite Decree No. 3767 of November 1987 promulgated by the National Indian Foundation, which declared Guaja Indian territory a prohibited area for non-Indians. The Guajas have already lost a part of their territory, which has been divided up into regions around the Middle Zutiwa River, the Upper Pindaré River and some tributaries of the Turiaçu River. In this region hundreds of Indians (Guaja, Guajajara and Ka'apor) have died as a result of the entry of settlers into their lands, epidemics and conflicts with non-Indians.

The groups living in isolation in the Javari Valley

17. On 3 September 1989, in the region watered by the Itui and Itaquai Rivers, tributaries of the Javari River in the municipality of Atalaya do Norte in Amazonas State near the Brazilian-Peruvian border, three Korubo Indians were murdered in their traditional territory by a group of 14 fishermen and loggers, whose ringleaders were João Vieira and two other Brazilians named Gonzaga and Ribamar, residents of the small town of Benjamin-Constant. These fishermen and loggers had planned the murder of the four Korubo Indians, whom they had seen the evening before on the banks of the Itaquai River, the boundary of their territory. They split up into three armed groups, surrounded the Indians and fired at them. One Korubo managed to escape, the other three were shot and killed. After murdering the Indians, the group penetrated further into Korubo lands where they came across a multi-family dwelling housing some 60 people, into which they threw explosives used for fishing. It is not known how many people were killed or wounded. So far, despite all the condemnations at the national level and all the legal proceedings initiated in the Brazilian courts, not a single measure has been taken to protect the Korubo Indians and the other ethnic groups living in isolation in the Javari Valley or to punish the perpetrators of such crimes. The Korubo, who remain cut off from any contact with the rest of Brazilian society, are estimated to number about 600. The indigenous groups in the Javari Valley, and especially the Korubos, have repeatedly shown that they want no contact with non-Indians and that they prefer to live their lives protecting their environment.

18. It is well known that the Korubos and other indigenous peoples such as the Jandiatuba River and San José Channel Indians, who still live in isolation in the region, defend their territory by fighting many battles with any loggers, firemen, Government officials or development project technicians who, for one reason or another, try to penetrate their territory or compel them to intermingle. Many Indians and non-Indians have died in these conflicts. For example, when Petrobras (the Brazilian oil exploration company) conducted seismographic tests in the territory of the Korubos and the indigenous peoples of the Jandiatuba River in 1984 and 1985, the lands of these isolated peoples were crossed by a network of hundreds of paths and roads and numerous charges of dynamite were set off. As a result, nine "malocas" or multi-family dwellings caught fire, several Indians were killed or wounded, including two Indians from Jandiatuba who were burnt by some caustic soda left on the MIK 13 drill site, in the heart of the indigenous peoples' territory, and four Petrobras and FUNAI employees were killed.

19. In 1985, the Native Missionary Council and the Javari Campaign team complained to the international community about the serious situation of the groups living in remote areas of the Javari Valley. Pressure was brought to bear, resulting in the withdrawal of the oil company and the signature by FUNAI of decree No.1849/E of 8 April 1985, prohibiting the entry of non-Indians into the region. Unfortunately, this measure has never been enforced and the territories of the groups living in remote areas are still being invaded by people who come to extract fine wood and rubber. Higher prices for wood on the international markets have led to the establishment of numerous saw mills at the mouth of the Javari River. Increasing numbers of loggers are going further and further upstream along the tributaries of the Javari River. In the face of the passivity of FUNAI and other federal agencies, and their laissez-faire attitude towards those who wield economic power in the region, conflicts and attacks on these isolated groups have intensified.

20. In conclusion, the International Federation Terre des Hommes would like to recommend that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should:

(a) Make arrangements to send an observer to the Yanomami Indian territory;

(b) Invite the Brazilian Government to:

(i) Rescind inter-ministerial decree No.158, reducing the Awa-Gurupi territory by 82,000 hectares;

(ii) Restore the Awa-Gurupi territory to its original size of 147,500 hectares;

(iii) Ensure strict compliance with the banning order protecting the territories of the isolated groups in the Javari Valley;

(iv) Set final boundaries for the Indian lands in the Javari Valley;

(v) Bring those who have massacred the Korubo Indians to justice;

(vi) Implement an indigenous peoples' protection policy in order to create a harmonious and non-coercive relationship between the groups of isolated Indians and the rest of Brazilian society.